Supreme Court, U.S.
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In The

Supreme Court of the United States

WILBERT WILLIAMS,

Petitioner,

v.

GOVERNMENT OF THE VIRGIN ISLANDS BOARD OF MEDICAL EXAMINERS; THELMA R. WATSON; FRANK A. ODLUM; JOSEPH DEJAMES,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Did the Third Circuit err in disregarding the Supreme Court's holding in *Ohio Bureau of Employment v. Hodory,* 431 U.S. 471, 480 (1977) by not addressing the Petitioner's argument that Respondents waived any entitlement to abstention under the *Younger* doctrine pursuant to equitable principles of waiver, when Respondents first consented to the district court's jurisdiction and then only raised abstention after (1) an adverse ruling against it and (2) after it was too late for the Petitioner to seek relief under the "state remedies" that would have been available had a timely *Younger* motion been filed?

2. Did the Third Circuit err in (1) concluding that the Petitioner (a medical doctor) failed to raise the bad faith exception recognized in *Younger v. Harris,* 401 U.S. 37, 56 (1971) when this issue was expressly identified and fully briefed in the Petitioner's opening brief and (2) thus not addressing this issue based on the facts presented, including the drastically increased penalty given to the Petitioner after the second hearing (lifetime license revocation) without any explanation for doing so, where the Petitioner had successfully challenged the first order (one year suspension) on constitutional grounds requiring the second hearing?

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The Petitioner is a doctor who had his medical license suspended for one year by the Virgin Islands Board of Examiners ("Board") on June 17, 2005. App. 40. The Petitioner sought relief, including injunctive relief, from the District Court of the Virgin Islands. The court found that the Board's actions were taken in violation of the Petitioner's due process rights and granted a temporary restraining order on July 12, 2005, enjoining the Board from enforcing its order. App. 48. The Board decided not to contest that finding, agreeing to the entry of an injunction (App. 63), and then setting the matter for a new hearing. App. 60.

After holding another hearing, the Board revoked the Petitioner's license (as opposed to its earlier one year suspension) on January 26, 2006 (App. 80-81), though its order was not served on the Petitioner until March 7, 2006. The Petitioner promptly asked the District Court (in the same proceedings that were still pending) to again enjoin the Board from enforcing this new order because once again his due process rights were violated by the Board's conduct, despite the clear guidelines previously provided by the District Court in its first opinion.

The District Court found that the Board had still violated the Petitioner's due process rights in its proceedings and entered a new temporary restraining order on March 10, 2006, enjoining the Board from enforcing its revocation order. App. 83. Rather than

challenge this finding, the Board agreed to the entry of a preliminary injunction on March 30, 2006. App. 95. However, it subsequently moved to dismiss the case for lack of jurisdiction based on the abstention doctrine established by this Court in *Younger v. Harris,* 401 U.S. 37 (1971). After several hearings over the next several years, the District Court dismissed the case based upon the *Younger* doctrine on December 8, 2008, which is reported at *Williams v. Government of the Virgin Islands et al.,* 2008 WL 5142181 (D.V.I. 2008). App. 11. An appeal was taken to the Third Circuit, which affirmed the District Court's decision on January 12, 2010, in an unpublished opinion. App. 1.

BASIS FOR JURISDICTION IN THIS COURT

This action was filed in the United States District Court of the Virgin Islands based upon several federal jurisdictional statutes, including 28 U.S.C. §1331, 28 U.S.C. §2201, 42 U.S.C. §1983 and 15 U.S.C. §1. Upon entry of the final judgment dismissing the case a timely appeal was filed to the United States Court of Appeals for the Third Circuit, which has jurisdiction over appeals from the District Court of the Virgin Islands pursuant to 28 U.S.C. §1291 and §1294(3). This petition is timely filed under Supreme Court Rule 13(1) and this Court has jurisdiction pursuant to 28 U.S.C. §1254(1). Pursuant to Supreme Court Rule 14(e), Petitioner provides the following specific information:

(i) Date of judgment sought to be reviewed: January 12, 2010, issued by the United States Court of Appeals for the Third Circuit

(ii) Date of any order respecting rehearing/ extension of time: Not applicable, as none was sought

(iii) Rule 12.5 considerations: Not applicable to this Petition

(iv) Statutory Provision conferring jurisdiction: 28 U.S.C. §1254(1)

(v) Rule 29.4 statement: Not applicable to this Petition

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS INVOLVED

This case involves the abstention doctrine that is the judicially created exception to mandatory federal jurisdiction, as enunciated by the Supreme Court in *Younger v. Harris,* 401 U.S. 37 (1971).

STATEMENT OF THE CASE

Dr. Wilbert Williams was licensed to practice medicine in the Virgin Islands in 1983, where he has resided with his wife and children since 1981. He practiced Family Medicine on St. Croix for over 20

years without any problems with or complaints by the Virgin Islands Medical Board ("Board"). In May of 2005, he had a complaint filed against him by an anonymous person that resulted in a hearing before the Board.

On June 17, 2005, the Board subsequently suspended Dr. Williams' license to practice medicine for one year as a result of their findings regarding his treatment of the patient in question. App. 40. Dr. Williams believed that the notice of the hearing had neither advised him of the charges against him nor the potential consequences thereof, thus violating his due process rights. As such, he sought relief from this order by filing an action in the United States District Court of the Virgin Islands.

The District Court reviewed the application for a temporary restraining order and granted it on July 12, 2005, finding that Dr. Williams' due process rights had been violated by the Board based on the deficient notice it gave him before his hearing. App. 48. In its opinion, the court declined to give any weight to the findings of the Board because they had been entered without affording Dr. Williams due process in its proceedings. However, the court explained what due process was required before it could suspend Dr. Williams' medical license and then expressly stated that its ruling did not "impede the Board from taking further action against Dr. Williams after affording him reasonable notice and an opportunity to be heard."

A hearing on the preliminary injunction was then set. The Board decided not to contest the court's finding that it had violated Dr. Williams' due process rights, deciding instead that it would hold another hearing, which it promptly noticed. App. 60. As such, it consented to the court issuing a permanent injunction enjoining it from enforcing the one year suspension.[1] App. 63.

The Board then held another hearing. On January 26, 2006, the Board subsequently revoked Dr. Williams' medical license based on the same incident, rather than just suspending his license for one year as had been done after the first hearing. App. 80-81. Because the Board still failed to follow the court's instructions regarding the required due process, Dr. Williams filed another request for a temporary restraining order from the District Court regarding this revocation order in the same pending case. The District Court again found that the Board had failed to provide Dr. Williams with the required due process, despite its earlier admonitions, and issued a temporary restraining order on March 10, 2006.[2] App. 83. The court extended this TRO once and scheduled a

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[1] The court initially ordered the file to be closed but promptly reopened it once it realized there were other issues that were still unresolved. App. 65.

[2] The court again discounted the Board's findings in considering whether to grant the TRO, noting that those findings had been made without affording Dr. Williams' due process in its proceedings

hearing on the preliminary injunction for March 30, 2006. At the scheduled hearing the Board stipulated to the preliminary injunction being entered. App. 95.

The Board subsequently filed a motion challenging the court's jurisdiction on multiple grounds, which included an abstention argument. Of course, by now the time to file any challenge to the Board's administrative order under the local territorial procedures of the Virgin Islands had expired. *See* 5 V.I.C. §1421 *et seq.* and Rule 15 of the Superior Court of the United States Virgin Islands. Thereafter, the court held several hearings over the next two years to determine whether the case should be dismissed based on the abstention doctrine set forth in this Court's decision in *Younger v. Harris,* 401 U.S. 37 (1971).

The Petitioner argued that the exceptions to *Younger* applied here, identified in *Younger* as being "bad faith, harassment, or any other unusual circumstance that would call for equitable relief." *Id.* at 56. Subsequent decisions have reiterated these exceptions. In *Middlesex County Ethics Comm. v. Garden State Bar Ass'n,* 457 U.S. 423 (1982), this Court stated in part as follows:

> The importance of the state interest in the pending state judicial proceedings and in the federal case calls *Younger* abstention into play. So long as the constitutional claims of respondents can be determined in the state proceedings and so long as there is no showing of bad faith, harassment, or some other extraordinary circumstance that would make

abstention inappropriate, the federal courts should abstain. *Id.* at 435.

The Petitioner then presented evidence in the District Court to support his contention that these exceptions applied here based in part on the following facts:

1) The Board drastically increased the penalty given to Dr. Williams after the second hearing based on the same charges, revoking his license rather than just issuing a one year suspension;

2) The Board relied on evidence received after the hearing (without notice to Dr. Williams) after representing to Dr. Williams at the hearing that no such additional evidence would be considered;

3) The Board found that Dr. Williams had "lied" about his ACLS certification when he testified that his ACLS certification was current, when in fact the hearing transcript confirmed that his testimony had been truthful, as he had testified that his ACLS certification was not current;

4) The Board found that Dr. Williams did not have a license when he treated the patient in question, when he in fact did have a valid license, as evidenced by the documentation given to him by the Board and signed by a Board member;

5) The Board had a member who was in direct competition with Dr. Williams, but

failed to even consider removing her despite Dr. Williams' objection prior to the hearing.

This evidence presented to the District Court supporting these facts was undisputed as confirmed by the record below as follows:

1) The increased penalty is undisputed as noted by the revocation order issued after the second hearing, which drastically increased the Board's initial one year suspension after the first hearing. App. 40 and 80-81.

2) At the outset of the Board's second hearing, counsel for Dr. Williams specifically inquired whether records from pharmacies, pharmaceutical companies or other sources would be considered as part of the charges against Dr. Williams since he had not been provided any such documents, to which counsel for the Board said they would not be considered. App. 148-149. Notwithstanding this fact, the Board Chairperson admitted at the District Court hearing that such records were subsequently obtained and considered by the Board, even though Dr. Williams was never notified about these documents or given an opportunity to respond to these items. App. 153-156.

3) While the Board's decision found that Dr. Williams had lied at the second hearing by stating he was ACLS certified, the

Board Chairperson acknowledged at the District Court hearing that the hearing transcript (App. 150-151) confirmed that he had in fact testified that he was not ACLS certified at the time of the hearing. App. 161-164.

4) While the Board's decision found that Dr. Williams did not have a current license when he treated the patient in question, the Board Chairperson acknowledged at the District Court hearing that Dr. Williams had had his license renewed prior to treating the patient and that the Board had issued documentation to him to this effect. App. 157-158. She then tried to explain the Board's findings by stating that Dr. Williams should not have been given the documentation in question because he was late in providing certain paperwork needed for his annual license renewal. However, when questioned further the Chairperson admitted that many doctors in the Virgin Islands are routinely late in providing this renewal paperwork, yet they are routinely allowed to practice while this paperwork is being obtained and submitted for their annual license renewal. More importantly to the "bias" issue in this case, the Chairperson then admitted that at the time period relative to Dr. Williams' treatment of the patient in question, the Board's practice was to allow doctors to practice while this paperwork was being processed, meaning

the Board's finding that Dr. Williams did not have a license when he treated the patient was a retroactive "rule" uniquely created to apply solely to Dr. Williams. App. 158-161.

5) Dr. Williams also provided detailed information explaining why one of the Board members was in direct competition to him, which the District Court found to be insufficient to warrant a finding of bias even though the Board member in question did not testify or provide any information to refute this fact. App. 34n.1.[3]

While a full review of the record is not possible in this petition, the foregoing analysis presents sufficient information for this Court to understand the evidence and arguments presented in the District Court in order to address this petition.

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[3] The District Court only made a finding regarding this last point as will be discussed further herein. Regarding the conflict of the one Board member, Dr. Dizon, the court first acknowledged that 80% of Dr Williams' practice was the same as that of Dr. Dizon, who is an endocrinologist. The court suggested this figure was inflated, however, because it included Dr. Williams' treatment of diabetes, it somehow eliminated this conflict. App. 34n 1. However, as the Board's Chairperson testified, the treatment of diabetes is one of the areas of an endocrinologist's practice (App. 168). Thus, the court's finding that there was no conflict made no sense, an issue raised on appeal (App. 134-136), which the Third Circuit summarily disposed of by deferring to the District Court's finding. App 7

The District Court subsequently held on December 8, 2008, that the *Younger* abstention doctrine required dismissal of the case and that none of the *Younger* exceptions applied. App. 11. That decision is reported at *Williams v. Government of the Virgin Islands et al.,* 2008 WL 5142181 (D.V.I. 2008).[4] An appeal was then taken to the Third Circuit, which affirmed the District Court in an unpublished decision issued on January 12, 2010. App. 1.

ARGUMENT FOR GRANTING THE WRIT

I. The Court should grant the petition because the Third Circuit erred in not recognizing this Court's holding in *Ohio Bureau of Employment v. Hodory,* 431 U.S. 471, 480 (1977), thus failing to address the facts relevant to this holding raised in the record regarding the Respondents' waiver of any claim for comity under the *Younger* abstention doctrine.

The Petitioner raised the issue of whether the Respondents waived its right to assert comity under the *Younger* doctrine, citing *Ohio Bureau of Employment v. Hodory,* 431 U.S. 471, 480 (1977), and arguing that the Board's conduct in this case constituted such

[4] That ruling dissolved the preliminary injunction that had allowed Dr Williams to practice medicine during the three plus years while the case was pending

a waiver. The Third Circuit noted this argument, but then stated "Williams offers no authority for this waiver argument." App. 8. The Third Circuit did distinguish one of its other holdings cited by Williams, *Herz v. Degnan,* 648 F. 2d 201, 209-210 (3rd Cir. 1981), which held that one factor to consider in denying a *Younger* motion is whether substantial litigation had already taken place in the district court. However, the Third Circuit failed to even acknowledge this Court's holding in *Hodory.* App. 7-8.

The failure of the Third Circuit to even acknowledge that a party can waive its ability to raise a *Younger* issue constitutes clear error. Indeed, other courts have had no problem in recognizing this waiver issue. *See, e.g., O'Neill v. Coughlan,* 511 F. 3d 638, 641-644 (6th Cir. 2008) (both parties recognized that a state can waive the application of *Younger)*; *Cradle of Liberty Council, Inc. v. City of Philadelphia,* 2009 WL 3921140 at *4 (E.D.Pa. 2009), *reconsideration denied,* 2010 WL 68874 at *3-4; *Sharkey's, Inc. v. City of Waukesha,* 265 F. Supp. 2d 984, 988 (E.D. Wis. 2003); *Norton v. Town of Islip,* 239 F. Supp. 2d 264, 275 (E.D.N.Y. 2003).

Hodory noted that while *Younger* is concerned in an "equitable setting" with the principles of "comity and federalism," a state can waive *Younger* abstention even after initially raising the issue. *Id.* at 477-481. As this Court noted, "[i]f the State voluntarily chooses to submit to a federal forum, principles of comity do not demand that the federal court force the case back into the State's system." *Id.* at 480.

The "waiver" question that is raised here is whether the state, after consenting to the federal court's jurisdiction but then deciding that it did not like that court's decision, can then raise a *Younger* abstention argument. After all, once the District Court found that the Board's order should be enjoined for violating the Petitioner's due process, what else would a subsequent state/territorial court do except to second guess the District Court's ruling? Indeed, how could the Respondents even seek a different ruling when they stipulated to entry of the preliminary injunction finding that they had violated the Petitioner's due process rights? Clearly, the principles of equity and comity do not allow such "forum shopping" so that abstention must be deemed waived under such circumstances.

In this case, the Respondents accepted the District Court's initial decision and the exercise of its jurisdiction after the first TRO, deciding to hold a new hearing and stipulating to a permanent injunction regarding its first decision. However, after the District Court enjoined its second decision almost a year later, the Board changed its mind and decided it did not like being before the District Court. While the Board did not contest the merits of this second ruling, which found that it had violated Dr. Williams' due process rights, it then raised an abstention argument, moving to dismiss the case for lack of jurisdiction.

More importantly, and in further support of the Petitioner's *Hodory* argument, the Board's motion to dismiss was filed after the time had expired for Dr.

Williams to challenge his license revocation within the judicial process under the Virgin Islands judicial system. The District Court discussed this fact, noting that the time to invoke the "state-judicial remedy" under the local Virgin Islands rules had expired, which would effectively leave Dr. Williams with no remedy to address his license revocation, even though it is undisputed that the Board's decision had been made in violation of Dr. Williams' due process rights.[5] App. 18-20n.4.

Thus, the question arises as to whether the Respondents are entitled to the principles of comity and equity that are the foundation of the *Younger* abstention doctrine, as the Respondents' delay in raising the issue only after an adverse finding allows it the benefit of not being subject to the "state-judicial remedy" that could have otherwise been invoked had the Respondents not delayed in raising this issue.[6] Indeed, the Respondents' acceptance of the first TRO, stipulating to it becoming an injunction, certainly justified

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[5] Indeed, the District Court even suggested a possible procedural solution to this problem. App. 20 Of course, the Petitioner immediately filed an action in the Superior Court of the Virgin Islands after the District Court's dismissal, raising multiple reasons why the case should be deemed timely, including reliance in part on 28 U.S C. § 1367(d), but the local court rejected those arguments and dismissed the claim as untimely An appeal is pending in the Supreme Court of the Virgin Islands, which has heard oral arguments, but no decision has been rendered, so Dr. Williams' practice remains closed.

[6] This was the precise waiver issue before the Third Circuit. App. 121-126.

any reliance by the Petitioner that the Respondents had agreed to the District Court's jurisdiction in this case.[7]

While *Hodory* involved a case where the state clearly agreed to waive the abstention argument, nothing in that decision limits the waiver argument to the circumstances of that case. Instead, while *Hodory* explained some of the possible reasons why a state might refrain from arising an abstention argument, the State of Ohio did not explain its motives in that case.

Indeed, because the abstention from the exercise of jurisdiction is the exception, not the rule, based on the equitable (and common sense) principles of comity and equity, clearly a state should not be allowed to invoke this doctrine at any stage of the proceedings after consenting to the court's jurisdiction just because it no longer likes the decisions of a federal court. In fact, *Younger* specifically counseled against abstention when there is "any other unusual circumstance that would call for equitable relief."

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[7] Indeed, if a governmental entity is allowed to engage in such conduct, then the Board could have taken the same tactic after the first TRO, waiting for the appeal time under the local law to expire and then enforce its one year suspension after prevailing in a *Younger* motion. It obviously did not want to pursue that path as it wanted to further punish Dr Williams for invoking the judicial process, as will be discussed in Argument II herein.

Clearly, it is only equitable (and certainly not a violation of the principles of comity) to find that a waiver also occurs when the doctrine is raised only after an adverse decision has been rendered, particularly when an otherwise timely "state appeal" that could have been filed is now time barred. In short a "waiver" can occur where clear "forum shopping" or prejudicial "litigation tactics" are the state's motivation in belatedly raising an abstention issue rather than preserving comity.

Indeed, in *Hodory* the constitutionality of the statute in question was still ripe for resolution through the state judicial system had the state chosen to invoke the abstention doctrine. In this case, that option no longer existed due to the Respondents' calculated delay in making this decision after it received an adverse ruling from the District Court. As such, the Respondents should be found to have waived their claim for comity under *Younger*, a finding permitted by this Court's ruling in *Hodory*, which the Third Circuit chose not to recognize.

Alternatively, since the Third Circuit refused to consider this argument based on the facts before it, it is respectfully submitted this matter should at least be remanded to it for consideration of this issue.

II. The Third Circuit erred in concluding that the Petitioner failed to raise the issues regarding the bad faith exception to *Younger* and then not addressing these issues based on the facts presented, including the drastically increased penalty given to the Petitioner after the second hearing.

The crux of the Petitioner's argument that the District Court should have recognized the *Younger* exceptions relied on several critical facts arising out of the Board's second hearing, as noted in the Statement of Facts. The District Court addressed some, but not all of these facts. Most importantly, the District Court totally ignored the critical facts related to the Board's bias and bad faith, including the drastically increased penalty after the second hearing.

In his brief to the Third Circuit, the Petitioner specifically raised the issue of whether the *Younger* exceptions applied in this case, listing this issue at the outset of the brief as well in the body of the argument. App. 101 and 126. The Petitioner's brief then spent the next seventeen pages discussing why the specific facts in this case, as discussed herein, met the legal standard justifying the application of these recognized *Younger* exceptions, repeatedly arguing that the District Court should not have abstained in this case because of these facts. Indeed, the issue related to the drastically increased penalty was discussed at length. App. 112-113, 130-131, 140, 143-144.

Notwithstanding the express statement of the issues and the lengthy argument that followed in the brief, the Third Circuit only addressed one of the factual arguments raised by the Petitioner – the conflict of interest of another Board member who was in direct competition with Dr. Williams (App. 7) – but then summarily dismissed all of the remaining other factual arguments in a footnote by incredibly stating as follows (App. 7):

> In his brief, Williams argues that the district court abused its discretion by not making any findings regarding all of his other claims of the Board's bias. William's (sic) Br. at 38-43). However, those issues were raised by Williams in his claim in the district court that the Board acted in bad faith and, therefore, abstention was not appropriate under the bad faith exception to *Younger*. As noted, the district court rejected Williams' contention that it should not abstain under the bad faith exception to *Younger*. **Williams does not challenge the district court's holding on the bad faith exception in his appeal.** (emphasis added).

This finding is clear error as the Petitioner's brief expressly raised this issue in its Statement of the Issues and again in the Argument section of his brief filed with the Third Circuit. Indeed, this issue was thoroughly briefed. In short, no fair reading of the Petitioner's Third Circuit brief could possibly limit the issue on appeal regarding the application of the

Younger exceptions solely to the conflict of interest issue related to the one Board member.[8]

Of course, not only did the Petitioner raise this issue, but the pages in the Petitioner's brief cited by the Third Circuit (pp. 38-43 at App. 140-144), contained one of the Petitioner's primary points being raised – that the District Court had "simply made no findings regarding the bulk of the facts submitted by Dr. Williams to support his claim of bias. . . ." (App. 140), which then specifically listed the most critical aspects of Dr. Williams' arguments as follows (App. 140):

1) The Board drastically increased the penalty given to Dr. Williams after the second hearing based on the same charges, revoking his license rather than just issuing a one year suspension;

2) The Board's reliance on evidence received after the hearing (without notice to Dr. Williams) after representing to Dr. Williams at the hearing that no such additional evidence would be considered;

3) The Board's finding of lying regarding the ACLS certification when the transcript revealed he testified truthfully when asked about this certification.

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[8] In fact, the Third Circuit had no trouble in finding that Dr. Williams had raised the "waiver" argument, even though that issue was only listed in the Argument section of the brief rather than in the initial Statement of Issues, unlike the *Younger* exceptions argument that was listed both places

Thus, it is completely incomprehensible how the Third Circuit can then describe these factual issues as having been considered by the District Court (when it did not do so) and then further state that the Petitioner did not raise these factual matters on appeal!

Indeed, neither the District Court nor the Third Circuit ever addressed the glaring issue raised by the increased penalty imposed by the Board after the second hearing.[9] In this regard, this Court held in *North Carolina v. Pearce*, 395 U.S. 711 (1969), that vindictiveness is presumed when a defendant receives a harsher sentence after a successful constitutional challenge to his first conviction absent an express articulated reason for imposing a harsher sentence. Notwithstanding this significant Supreme Court decision, cited to both the District Court and the Third Circuit, neither court addressed its implications to the facts of this case.

In this regard, this Court has held that one of the *Younger* exceptions is found where the evidence demonstrates that the state administrative agency is incompetent by its reason of bias to adjudicate the issues pending before it, holding in *Gibson v. Berryville*, 411 U.S. 564 (1973) as follows:

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[9] The District Court specifically identified this issue as one of Dr. Williams' primary contentions in support of his argument that the *Younger* exceptions applied (App. 24), but then never addressed it.

> Here the predicate for a *Younger v. Harris* dismissal was lacking, for the appellees alleged, and the District Court concluded, that the State Board of Optometry was incompetent by reason of bias to adjudicate the issues pending before it. If the District Court's conclusion was correct in this regard, it was also correct that it need not defer to the Board. Nor, in these circumstances, would a different result be required simply because judicial review, *de novo* or otherwise, would be forthcoming at the conclusion of the administrative proceedings. *Id.* at 577.

The failure of both the District Court and the Third Circuit to address this critical issue of bias based on this Court's holding in *Pearce* is grounds for granting this writ (or remanding this case for further findings), as the imposition of an increased penalty after a successful constitutional challenge to a prior proceeding without some justification for the increased penalty violates the due process clause. Why? Because it is presumed to be evidence of vindictiveness and is certainly evidence of actual bias absent such an explanation.

Indeed on this record one has to ask why the Board agreed to a new hearing after the TRO enjoining the one year suspension rather than simply raising the *Younger* abstention doctrine at that point? Based on the Board's subsequent actions it reasonably appears that it wanted to teach Dr. Williams a lesson for challenging its authority. Whether the Board was biased against Dr. Williams for asserting

his legal rights, making the Board look unprofessional since this Court reversed the Board's initial findings, or for standing up to the Board, so that a message had to be sent to other doctors that such insubordination would not be tolerated is not known.[10]

Regardless of why it imposed a far more severe penalty, what is clear is that no justification has ever been given for the increased penalty imposed upon Dr. Williams, resulting in a lifetime revocation of his medical license. More important to this Petition, neither the District Court nor the Third Circuit even attempted to find if there was any justification for the Board's action despite this point being repeatedly raised by the Petitioner. As such, it is respectfully submitted that this question involving the presumed bias of the Board alone justifies issuing the writ in this case.

Moreover, the failure of either court to address the other facts asserted in support of the finding of bias, bad faith and exceptional circumstances also supports the granting of the writ in this case. For example, if the Board affirmatively tells Dr. Williams that it will not be considering any other evidence and

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[10] Indeed, the Board has also ignored Dr. Williams' application for reinstatement, even though the Legislature has adopted a resolution which was then approved by the Governor calling for the Board to consider his reinstatement because of his multiple contributions and services provided to the citizens of the Virgin Islands for over 29 years and to grant him due process. App. 169-171.

then it subsequently does so without providing him an opportunity to respond to that evidence, there is a question of bias. Likewise, if the Board finds that Dr. Williams lied at the hearing when the transcript clearly shows otherwise, there is a question of bias. Indeed, if the Board decides to enact a new standard for determining when a license has been renewed just to apply this new standard retroactively only to Dr. Williams (without telling him), there is clearly evidence of bias.[11]

Add these individual facts together, none of which are in dispute as admitted by the testimony of the Board's Chairperson, with the fact that a drastically increased penalty was imposed and it reasonably appears that the Board had prejudged the outcome of the second hearing, going through the process simply to make sure Dr. Williams would never practice medicine again. This result is of course the danger that exists where the Board is its own investigator and expert witness as well as being the adjudicator, as was the case here.[12]

As the District Court and the Third Circuit erred in failing to even consider these undisputed facts in deciding whether to apply the exceptions recognized

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[11] The District Court noted each of these factual arguments in its opinion (App. 24), but then never addressed the merits of any of them.

[12] The Board acknowledged that it acted as its own investigator and expert witness in these proceedings. App 166-167.

in *Younger, Gibson* and other subsequent decisions, it is respectfully submitted that this Court should grant the petition for certiorari to consider these *Younger* issues or then remand this case with instructions for the Third Circuit to address these issues that were clearly raised, contrary to the Third Circuit's opinion.

CONCLUSION

For the reasons set forth herein, it is respectfully submitted that the petition should be granted in this case to insure that the Third Circuit follows the clear holdings established by this Court. The District Court found that the Respondents violated the Petitioner's due process in its proceedings that revoked his license, a finding the Respondents accepted. However, the Respondents then used the judicially created abstention doctrine adopted in *Younger* to avoid the court's jurisdiction after this adverse finding.

Clearly abstention doctrines were never intended to be used as a litigation tool to avoid the court's jurisdiction simply because the governmental entity no longer liked being in federal court. Under the circumstances found in this case, a finding of waiver, an equitable remedy, certainly falls within the guidelines established in both *Younger* and *Hodory*. Otherwise, a decision revoking the Petitioner's medical license that was undisputedly issued in violation of the Petitioner's due process rights will be allowed

to go unchallenged due to the belated and inequitable application of an abstention doctrine.

Equally important, this Court has established precedents that prevent the use of the *Younger* principles where there is "bad faith" or "other unusual circumstance that would call for equitable relief." While the contours of these rules are impossible to completely define, clearly the imposition of a much harsher penalty after a successful constitutional challenge to the first finding constitutes one such basis for finding bias absent an explanation for the increased penalty. In this case, the Petitioner has presented several additional undisputed facts that further support the Petitioner's position that the Respondents were biased and acted in bad faith so that abstention is not appropriate under *Younger*.

Finally, while this Court has many important matters to deal with, from time to time it still needs to address the proper administration of justice by the circuit courts. In this case, Dr. Williams had his medical license revoked for life after he successfully asserted his constitutional rights in order to get a new hearing. This subsequent drastically increased penalty implicates another important constitutional issue under this Court's holding in *Pearce*. Notwithstanding this fact, both the District Court and the Third Circuit failed to address this constitutional issue even though it was clearly raised. As such, this Court should also exercise its supervisory powers in this case by granting the petition to insure that the

circuit courts properly carry out their functions by addressing these important constitutional questions.

Respectfully submitted,

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Dated: April 9, 2010

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 08-4795

WILBERT WILLIAMS,
Appellant

v.

GOVERNMENT OF THE VIRGIN ISLANDS
BOARD OF MEDICAL EXAMINERS; THELMA R.
WATSON; FRANK A. ODLUM; JOSEPH DEJAMES

Appeal from the District Court
of the Virgin Islands
(Civ. No. 1-05-cv-00097)
District Judge: Hon. Curtis V. Gomez

Submitted pursuant to Third Circuit LAR 34.1(a)
December 1, 2009

Before: McKEE and FUENTES,
and NYGAARD, *Circuit Judges*,

(Opinion filed: January 12, 2010)

OPINION

McKEE, *Circuit Judge*.

Wilbert Williams appeals the district court's dismissal of his complaint pursuant to the abstention principles articulated in *Younger v. Harris,* 401 U.S. 37 (1971), and its progeny. Williams filed the complaint against the Virgin Islands Board of Medical Examiners and three of its members (hereinafter the "Board"), after the Board suspended his license to

practice medicine. For the reasons that follow, we will affirm the district court's decision to abstain pursuant to *Younger*.[1]

I.

Because we write primarily for the parties who are familiar with the underlying facts and procedural history, we need not recite either here.

"Abstention is a judicially created doctrine under which a federal court will decline to exercise its jurisdiction so that a state court or agency will have the opportunity to decide the matters at issue." *Kentucky West Virginia Gas Co. v. Pennsylvania Public Utility Commission,* 791 F.2d 1111, 1114 (3d Cir. 1986) (citation omitted). The doctrine is rooted in concerns for the maintenance of the federal system and "represents an extraordinary and narrow exception to the 'virtually unflagging obligation of the federal courts to exercise the jurisdiction given them.'" *Id.* (quoting *Colorado River Water Conservation Dist. v. United States,* 424 U.S. 800, 817 (1976)). Consequently, abstention is justified "only in the exceptional circumstances where the order to the parties to repair to the State court would clearly serve an important

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[1] "In reviewing the district court's abstention, the underlying legal questions are subject to plenary review, but the decision to abstain is reviewed for an abuse of discretion." *Grode v. Mutual Fire, Marine and Inland Ins. Co.,* 8 F.3d 953, 957 (3d Cir. 1993) (citation omitted).

countervailing interest." *Id.* (citation omitted). In other words, "[a]bstention from the exercise of federal jurisdiction is appropriate only under certain limited circumstances." *Chez Sez III Corp. v. Township of Union,* 945 F.2d 628, 630 (3d Cir. 1991) (citation omitted). Those circumstances "are loosely gathered under discrete concepts of abstention named after leading Supreme Court cases," *Chiropractic America v. Lavecchia,* 180 F.3d 99, 103 (3d Cir. 1999), *viz.*, "*Pullman*" (*Railroad Comm'n of Texas v. Pullman,* 312 U.S. 496 (1941)), "*Burford*" (*Burford v. Sun Oil Co.,* 319 U.S. 315 (1941), "*Younger*" (*Younger v. Harris,* 401 U.S. 37 (1971), and "*Colorado River*" (*Colorado River Water Conservation Dist. v. United States,* 424 U.S. 800 (1976). As we have noted, this appeal involves *Younger* abstention.

In *Younger,* the district court enjoined the Los Angeles County District Attorney from prosecuting the defendant under a constitutionally-suspect state statute. The Supreme Court reversed, finding the injunction "a violation of the national policy forbidding federal courts [from] stay[ing] or enjoin[ing] pending state court proceedings except under special circumstances." *Younger,* 401 U.S. at 41. "Although *Younger* involved a state court criminal proceeding, the national policy against enjoining pending state court proceedings has since been extended to noncriminal proceedings," including administrative proceedings. *Zahl v. Harper,* 282 F.3d 204, 208 (3d Cir. 2002) (citations omitted). The Supreme Court has set out a three-part test for determining whether *Younger*

abstention is appropriate. "Abstention is appropriate when: (1) there is a pending state judicial proceeding; (2) the proceeding implicates important state interests; and (3) the state proceeding affords an adequate opportunity to raise constitutional challenges." *Id.* at 209 (citing *Middlesex County Ethics Comm. v. Garden State Bar Ass'n,* 457 U.S. 423, 432 (1982)). However, even if the *Younger* test is met, abstention is not appropriate in all circumstances. A federal court may interfere with a state proceeding "in certain exceptional circumstances – where irreparable injury is 'both great and immediate,' where the state law is 'flagrantly and patently violative of express constitutional prohibitions,' or where there is a showing of 'bad faith, harassment, or . . . other unusual circumstances that would call for equitable relief." *Mitchum v. Foster,* 407 U.S. 225, 230 (1972) (quoting *Younger,* 401 U.S. at 46-54).

III.

In holding that the *Younger* test was met, the district court found: (1) that the Board's proceedings are ongoing and judicial in nature; (2) that the Board has a "significant interest . . . in regulating the practice of medicine with an eye toward improving the public health;" and (3) that Williams has an adequate opportunity to raise his constitutional claims because he can assert his due process claims during the territorial forum's review of the Board's decision. 2008 WL 5142181 at *3-5. The district court also rejected William's contention that abstention is not

appropriate under the *Younger* bad faith and extraordinary circumstances exceptions. *Id.* at *5-10.

In his appeal, Williams does not challenge the district court's holding that the *Younger* test was met. Instead, he contends that there are extraordinary circumstances present in his case that make abstention inappropriate. The extraordinary circumstances exception is part of the *Younger* "bad faith, harassment or any other unusual circumstance that would call for equitable relief" exception. *Diamond "D" Construction Corp. v. McGowan,* 282 F.3d 191, 201 (2nd Cir. 2002). In *Kugler v. Helfant,* 421 U.S. 117 (1975), the Supreme Court explained the extraordinary circumstances exception:

> Only if "extraordinary circumstances" render the state court incapable of fairly and fully adjudicating the federal issues before it, can there be any relaxation of the deference to be afforded to the state criminal process. The very nature of "extraordinary circumstances," of course, makes it impossible to anticipate and define every situation that might create a sufficient threat of such great, immediate, and irreparable injury as to warrant intervention in state criminal proceedings. But whatever else is required, such circumstances must be "extraordinary" in the sense of creating an extraordinarily pressing need for immediate federal equitable relief, not merely in the sense of presenting a highly unusual factual situation.

Id. at 124-25 (footnote omitted). Although *Kugler* spoke in the context of criminal prosecutions, the same standard applies in the civil context. *Moore v. Sims,* 442 U.S. 415 (1979).

As the Second Circuit noted in *Diamond "D",* the Supreme Court has found extraordinary circumstances present on only two occasions: (1) "when a state statute is flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whomever an effort might be made to apply it"; and (2) "when the state administrative agency was incompetent by reason of bias to adjudicate the issues pending before it." 282 F.3d at 201 (citations and internal quotations omitted).

Williams contends that abstention is inappropriate because of the Board's bias against him. "Bias exists where a court has prejudged, or reasonably appears to have prejudged, an issue." *Kenneally v. Lundgren,* 967 F.2d 329, 333 (9th Cir. 1992) (citation omitted). "[T]he baseline showing of bias necessary to trigger *Younger's* escape mechanism requires the plaintiff to offer some evidence that abstention will jeopardize his due process right to an impartial adjudication." *Brooks v. New Hampshire Supreme Court,* 80 F.3d 633, 640 (1st Cir. 1996) (citations omitted). "To implicate due process, claims of general institutional bias must be harnessed to a further showing, such as a potential conflict of interest, or a pecuniary stake in the outcome of the litigation." *Id.*

To support his claim of bias, Williams contended in the district court that he was in direct competition with Michelle Dizon, a medical doctor and a member of the Board during the disciplinary proceedings against him. He further contended that the Board overlooked or ignored that conflict and permitted Dizon to participate in those proceedings. However, the district court rejected Williams' contentions. It found that "Williams has presented little, if any, persuasive evidence that Dizon and he are in competition with each other or that Dizon has even a slight pecuniary interest in the outcome of the Board's proceedings against Williams." 2008 WL 5142181 at *9. Upon our review of the record, we agree with the district court that Williams did not present any persuasive evidence of bias on the part of the Board. Accordingly, his bias claim is without merit.[2]

Williams also argues that the Board waived its right to assert any *Younger* abstention because the Board stipulated to a permanent injunction on July 22, 2005, enjoining the Board from enforcing its June

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[2] In his brief, Williams argues that the district abused its discretion by not making any findings regarding all of his other claims of the Board's bias. William's Br. at 38-43. However, those issues were raised by Williams in his claim in the district court that the Board acted in bad faith and, therefore, abstention was not appropriate under the bad faith exception to *Younger* As noted, the district court rejected Williams' contention that it should not abstain under the bad faith exception to *Younger*. Williams does not challenge the district court's holding on the bad faith exception in his appeal.

17, 2005, suspension of Williams' license. However, Williams offers absolutely no authority for this waiver argument. He does cite to *Herz v. Degnan*, 648 F.2d 201, 209-210 (3d Cir. 1981), which he claims stands for the proposition that "*Younger* issues raised after substantial litigation had taken place in the district court should not deprive a plaintiff of his or her chosen forum." Williams' Br. at 24. While we do not agree with Williams' characterization of our holding in *Herz*, we note that *Herz* has nothing to do with the waiver of a party's ability to raise a *Younger* abstention issue. Rather, in *Herz*, we simply affirmed the district court's decision to not abstain under *Younger* under the facts of that case.

IV.

For all of the above reasons, we will affirm the district court.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 08-4795

WILBERT WILLIAMS,
Appellant

v.

GOVERNMENT OF THE VIRGIN ISLANDS
BOARD OF MEDICAL EXAMINERS; THELMA R.
WATSON; FRANK A. ODLUM; JOSEPH DEJAMES

Appeal from the District Court
of the Virgin Islands
(Civ. No. 1-05-cv-00097)
District Judge: Hon. Curtis V. Gomez

Before: McKEE and FUENTES, *Circuit Judges*
and NYGAARD, *Senior Circuit Judge*

JUDGMENT

(Filed Jan. 12, 2010)

This cause came on to be heard on the record from the District Court of the Virgin Islands and was submitted pursuant to Third Circuit LAR 34.1(a) on December 1, 2009.

On consideration whereof, it is now here ORDERED AND ADJUDGED by this Court that the order of the said District Court entered December 8, 2008, be, and the same is hereby affirmed. Costs taxed against appellant. All of the above in accordance with the opinion of this Court.

ATTEST:

/s/ Marcia M. Waldron
Clerk

Dated: January 12, 2010

FOR PUBLICATION

IN THE DISTRICT COURT
OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

WILBERT WILLIAMS, M.D., Plaintiff,	)	
v.	)	Civil No. 2005-97
GOVERNMENT OF THE VIRGIN ISLANDS, BOARD OF MEDICAL EXAMINERS: THELMA R. WATSON, FRANK A. ODLUM, AND JOSEPH DeJAMES, Defendants.	)	

ATTORNEYS:

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For the defendants.

MEMORANDUM OPINION

(Filed Dec. 8, 2008)

GÓMEZ, C.J.

In this matter, the Court must determine whether to abstain in accordance with the doctrine articulated by the Supreme Court in *Younger v. Harris,* 401 U.S. 37 (1971) ("*Younger*").

I. FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, Wilbert Williams ("Williams"), has been a family medical doctor on St. Croix, U.S. Virgin Islands since 1983.

On April 15, 2005, Williams treated Lydia Ventura for general body aches and weakness. Several days after seeing Williams, Ventura died.

On May 31, 2005, defendant the Virgin Islands Board of Medical Examiners (the "Board") sent Williams a notice. The notice recounted the Board's receipt of a letter of concern regarding Williams' treatment of Ventura. The notice also requested Williams' appearance at a show-cause hearing before the Board on June 9, 2005. On June 17, 2005, the Board suspended Williams' medical license for one year.[1]

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[1] In its decision, the Board found that Williams had acted negligently by, among other things, administering inappropriate medication to Ventura and afterward destroying all traces of that medication. The Board imposed several conditions precedent to the reinstatement of Williams' license.

Thereafter, Williams commenced this action against the Board and three of its members (together, the "Defendants"), alleging that the proceedings against him were procedurally inadequate. Counts One and Two of the complaint assert due process violations. Count Three seeks a declaration that the Defendants must adopt reasonable rules and regulations in accordance with Virgin Islands law. Count Four alleges an illegal monopoly in restraint of trade or commerce. Count Five requests a temporary restraining order ("TRO") and injunctive relief.

On July 12, 2005, the Court granted Williams' motion for a TRO and enjoined the Board from enforcing its suspension of Williams' license. The Court also scheduled a hearing on Williams' motion for a preliminary injunction for August 5, 2005.

On July 14, 2005, two days after the Court issued the TRO, the Board sent Williams another notice, indicating that it was initiating new disciplinary proceedings. Thereafter, the Board held another hearing, after which it revoked Williams' medical license for life.

Williams then applied for another TRO. The Court granted that application. The Court issued another TRO on March 10, 2006, enjoining the Board from enforcing its revocation of Williams' license. The Court also noted that the TRO would expire within ten days, as per Rule 65(b) of the Federal Rules of

Civil Procedure.[2] On March 24, 2006, the Court extended the TRO for another ten days. At a subsequent hearing on March 30, 2006, the parties stipulated on the record to an extension of the TRO until further order of the Court. The Court approved the parties' stipulation.[3]

The Court thereafter scheduled an evidentiary hearing for April 20, 2007 to determine whether *Younger* mandates dismissal of this matter. On the Defendants' motion, the hearing was continued to June 14, 2007. During the testimony of the first witness, the district judge initially assigned to this case called a recess and subsequently recused himself. The case was reassigned to the undersigned.

On November 17, 2008, the Court held an evidentiary hearing to determine whether *Younger* requires the Court to abstain and, if so, whether any exception to *Younger* applies.[4] The parties have filed pre-hearing and post-hearing briefs.

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[2] Fed. R. Civ. P. 65(b)(2) provides, in part, that a TRO "expires at the time after entry – not to exceed 10 days – that the court sets[.]"

[3] TROs that are extended by stipulation of the parties become, in effect, preliminary injunctions. *See United States v. Bayshore Assocs., Inc.*, 934 F.2d 1391, 1397 (6th Cir. 1991).

[4] Four witnesses testified on behalf of Williams: defendants Thelma R. Watson and Frank A. Odlum; Williams himself; and Williams' wife and longtime office manager, Iris Milagros Williams. No witnesses testified on behalf of the Defendants.

II. DISCUSSION

"Abstention is a judicially created doctrine under which a federal court will decline to exercise its jurisdiction so that a state court or agency will have the opportunity to decide the matters at issue." *Kentucky West Virginia Gas Co. v. Pennsylvania Public Utility Commission,* 791 F.2d 1111, 1114 (3d Cir. 1986) (citation omitted). "The doctrine is rooted in concerns for the maintenance of the federal system and represents an extraordinary and narrow exception to the virtually unflagging obligation of the federal courts to exercise the jurisdiction given them." *Hi Tech Trans, LLC v. New Jersey,* 382 F.3d 295, 303 (3d Cir. 2004) (quotation marks and citations omitted). "Consequently, abstention is justified 'only in the exceptional circumstances where the order to the parties to repair to the State court would clearly serve an important countervailing interest.'" *Id.* (quoting *Colorado River Water Conservation Dist. v. United States,* 424 U.S. 800, 817 (1976)). "In other words, 'abstention from the exercise of federal jurisdiction is appropriate only under certain limited circumstances.'" *Id.* (quoting *Chez Sez III Corp. v. Township of Union,* 945 F.2d 628, 630 (3d Cir. 1991)). "Those circumstances 'are loosely gathered under discrete concepts of abstention named after leading Supreme Court Cases[.]'" (citation omitted). One such case is *Younger v. Harris,* 401 U.S. 37 (1971).

In *Younger,* the Supreme Court held that, absent extraordinary circumstances, federal courts must abstain from interfering with pending state criminal

prosecutions. The Court based its decision on "the longstanding public policy against federal court interference with state court proceedings." 401 U.S. at 43. While *Younger* involved a state criminal prosecution, "the national policy against enjoining pending state court proceedings has since been extended to non-criminal judicial proceedings." *Zahl v. Harper,* 282 F.3d 204, 208 (3d Cir. 2002). The Supreme Court has explained the rationale animating *Younger* abstention:

> The notion of "comity" includes a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways. Minimal respect for the state processes, of course, precludes any presumption that the state courts will not safeguard federal constitutional rights.

Middlesex County Ethics Committee v. Garden State Bar Association, 457 U.S. 423, 431 (1982) (quotation marks and citations omitted).

Abstention is appropriate under *Younger* where "(1) there are ongoing state proceedings that are judicial in nature; (2) the state proceedings implicate important state interests; and (3) the state proceedings afford an adequate opportunity to raise the federal claims." *Schall v. Joyce,* 885 F.2d 101, 106 (3d

Cir. 1989); *see also Middlesex,* 457 U.S. at 432; *Kentucky West Virginia Gas Co. v. Pennsylvania PUC,* 791 F.2d 1111, 1116 (3d Cir. 1986).

Even if the *Younger* test is met, however, abstention is not appropriate in all circumstances. A federal court may interfere with a state proceeding if any one of four exceptions is met: (1) irreparable injury is both great and immediate; (2) the state law is flagrantly and patently violative of express constitutional prohibitions; (3) there is a showing of bad faith or harassment; or (4) other unusual circumstances call for equitable relief. *Mitchum v. Foster,* 407 U.S. 225, 230 (1972) (citing *Younger,* 401 U.S. at 46-54).

III. ANALYSIS

The first *Younger* factor asks whether the Board's proceedings are ongoing and judicial in nature. This factor is really a two-step inquiry.

In a technical sense, the Board's proceedings are not "ongoing" because the Board has already rendered a final decision regarding Williams' license. However, "for *Younger* purposes, the State's trial-and-appeals process is treated as a unitary system, and for a federal court to disrupt its integrity by intervening in midprocess would demonstrate a lack of respect for the State as sovereign." *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans,* 491 U.S. 350, 369 (1989). Thus, a state proceeding is "ongoing"

> where a coercive administrative proceeding has been initiated by the State in a state forum, where adequate state-court judicial review of the administrative determination is available to the federal claimants, and where the claimants have chosen not to pursue their state-court judicial remedies, but have instead sought to invalidate the State's judgment by filing a federal action.

O'Neill v. City of Philadelphia, 32 F.3d 785, 791 (3d Cir. 1994).

Williams has not sought a writ of review of, or otherwise challenged, the Board's decision. *See* V.I. CODE ANN. tit. 5, § 1421 (describing the procedure for seeking a writ of review). As a consequence, the Board's proceedings against Williams are ongoing within the meaning of *Younger*. *See, e.g., Zahl*, 282 F.3d at 209 (finding a proceeding ongoing because the plaintiff "has the right to appellate review by state courts if he wishes to challenge the final decision of the [state disciplinary board]"); *O'Neill*, 32 F.3d at 793 (holding that the first *Younger* prong was met where a state administrative proceeding was "was a judicial proceeding which may be deemed 'pending' as a result of [the appellants'] failure to take advantage of the [state] appellate remedies which were available to them").[5]

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[5] In *O'Neill v City of Philadelphia*, the plaintiffs received several parking tickets during the late 1980s and the early 1990s but did not pay their fines. Instead, they challenged their

(Continued on following page)

tickets before a municipal adjudicative body. On August 30, 1991, that body rejected the plaintiffs' objections to the tickets On October 30, 1991, the plaintiffs sued in federal court, alleging that their constitutional and state-law rights were violated by the administrative body's actions. On March 29, 1993, the district court found that the plaintiffs' due process rights had been violated. The City of Philadelphia appealed. The United States Court of Appeals for the Third Circuit found that the district court should have abstained. With respect to the second *Younger* factor, the court noted the plaintiffs had failed to seek state-court judicial review of the administrative body's order, opting instead to sue in federal court. To determine whether the state proceedings were nevertheless ongoing, the court framed the question as follows. "whether a state proceeding is 'pending,' and *Younger* abstention proper, where the adjudicatory process has become final as a result of the federal claimant's failure to pursue state-court judicial review of an unfavorable state administrative determination?" 32 F.3d at 790 (citation omitted). The court answered that question affirmatively, reasoning that "[w]e have been given no reason why a litigant in a state administrative proceeding should be permitted to forego state-court judicial review of the agency's decision in order to apply for relief in federal court " *Id.* at 790-91 The Third Circuit's main ground for so deciding was "considerations of comity[ ]" *Id.* at 793

In *O'Neill,* the dissent noted that by the time the plaintiffs had filed their federal suit, "the state administrative process was over[,] . . and any effort the plaintiffs might have made to return there to revive and pursue their administrative proceedings would have been rejected as time-barred." *Id.* at 796 (Lewis, J , dissenting) The dissent further noted that the effect of the majority's ruling was that plaintiffs who allege that a state administrative body has violated their constitutional rights, "cannot pursue a § 1983 claim in federal court – even after the administrative process is no longer pending, and even when they no longer have any recourse within the state system " *Id* at 802 (footnoted omitted)

(Continued on following page)

While there are no bright-line rules for determining the second step of the first *Younger* factor, whether a proceeding is judicial in nature depends not on the form of the proceeding but on its nature and effect. *See District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 481 (1983). A proceeding is judicial in nature if it "investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist." *See Prentis v. Atlantic Coast Line Co.*, 211 U.S. 210, 226 (1908). The fact that a proceeding is not presided over by a judicial officer or that a full range of due process

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The situation described by the dissent in *O'Neill* is precisely the one presented in this matter. It may well be that Williams no longer has any remedy in the Virgin Islands courts. *See* Super. Ct. R. 15(a) (requiring that a petition for a writ of review be filed within thirty days of the challenged decision). As in *O'Neill*, the potential unavailability of such review, however, is the fruit of Williams' own choice not to pursue his constitutional claims in the Superior Court. Indeed, Williams did file suit in that court, only to voluntarily dismiss it later in favor of his suit before this Court. Under the *O'Neill* majority's reasoning – which this Court is bound to follow – the potential unavailability of such review on statute-of-limitations grounds does not inform the Court's abstention inquiry. That reasoning has been described as the "majority view" among the federal courts of appeals *See Maymo-Melendez v. Alvarez-Ramirez*, 364 F.3d 27, 35 (1st Cir. 2004).

Recognizing the possibly harsh result of the application of *O'Neill*, this Court notes that Williams is not necessarily without any form of relief. Although a writ of review action may be time-barred, he may well be able to raise his allegations of constitutional injury in the Superior Court by way of a regular civil action. *See* V.I. CODE ANN. tit. 5, § 31(2)(A) (imposing a ten-year limitations period on "[a]n action for any cause not otherwise provided for in this section").

rights is not afforded is not dispositive. *Feldman,* 460 U.S. at 476-79. Courts have found proceedings to be judicial in nature where they "provide the type of procedural safeguards found in formal court proceedings," *Alleghany Corp. v. Haase,* 708 F. Supp. 1507, 1528-29 (W.D. Wis. 1988), or have "trial-like trappings," *Telco Communications, Inc. v. Carbaugh,* 885 F.2d 1225, 1228 (1st Cir. 1989).

The Board's proceedings are clearly judicial in nature because they are coercive territorial enforcement proceedings.[6] Those proceedings are precisely the type that have been considered judicial in nature for *Younger* purposes. *See, e.g., Zahl,* 282 F.3d at 209; *see also Green v. Benden,* 281 F.3d 661, 666 (7th Cir. 2002); *Majors v. Engelbrecht,* 149 F.3d 709, 712 (7th Cir. 1998). Because the Board's proceedings are

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[6] Furthermore, the Board's enabling legislation sets forth rules and procedures governing proceedings before it. Those procedures bear "trial-like trappings." Virgin Islands law provides, in relevant part:

> The procedural provisions must provide for investigation of charges by the Board; notice of charges to the accused; an opportunity for a fair and impartial hearing for the accused before the Board; an opportunity for representation of the accused by counsel; the presentation of testimony, evidence and argument; subpoena power and attendance of witnesses; a record of proceedings; and judicial review by the courts in accordance with the standards established by the jurisdiction for such review.

V.I. CODE. ANN. tit. 27, § 9(b).

ongoing and judicial in nature, the first *Younger* factor is met.

The second *Younger* factor is likewise satisfied. The very conduct of the Board in the wake of the complaint regarding Ventura's death, indicates the significant interest the Board has in regulating the practice of medicine with an eye toward improving public health. Without dwelling on the issue, the Court has little doubt that the Virgin Islands has an overriding interest in the regulation of its medical professionals. *See, e.g., Zahl,* 282 F.3d at 209 (affirming the district court's decision to abstain and agreeing with the district court's determination that "important to the public as a whole is regulation of the practice of medicine") (quotation marks omitted); *Doe v. Conn., Dep't of Health Servs.,* 75 F.3d 81, 85 (2d Cir. 1996) (stating that "Connecticut's legislative scheme for disciplining doctors serves important and obvious public health objectives."); *Bettencourt v. Bd. of Registration in Med.,* 904 F.2d 772, 778 (1st Cir. 1990) (holding that the enforcement of appropriate medical licensing standards "obviously implicates important state interests").

The third *Younger* factor asks whether Williams has an adequate opportunity to raise his constitutional claims in the territorial forum. This factor "is satisfied in the context of a state administrative proceeding when the federal claimant can assert his constitutional claims during state-court judicial review of the administrative determination." *O'Neill,* 32 F.3d at 792 (citing *Ohio Civil Rights Comm'n v.*

Dayton Christian Sch., Inc., 477 U.S. 619, 629 (1986); *Middlesex*, 401 U.S. at 436)). "Moreover, 'when a litigant has not attempted to present his federal claims in related state-court proceedings, a federal court should assume that state procedures will afford an adequate remedy, in the absence of unambiguous authority to the contrary.'" *Id.* (quoting *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 15 (1987)).

Williams has not challenged the Board's actions in the Superior Court. The availability of an adequate territorial forum to review the Board's decision satisfies the third *Younger* prong. *See, e.g., Zahl*, 282 F.3d at 210 (finding the third *Younger* factor met because the plaintiff could "assert his federal preemption claim in the state administrative proceeding" and "appeal to the Appellate Division of the Superior Court of New Jersey, . . . which is capable of reviewing [the plaintiff's] federal claims"); *O'Neill*, 32 F.3d at 792-93 ("In the present case, [neither of the appellants] attempted to raise his federal claims in the state proceedings. Accordingly, we would be well-justified in assuming that, had they done so, they would have been afforded an adequate remedy.").

Because the Court finds that the three *Younger* factors are met, the Court next considers Williams' contention that the circumstances of the Board's proceedings implicate any one of several *Younger* exceptions. Specifically, Williams argues that the

Board's bad faith as well as extraordinary circumstances require this Court's consideration.[7]

First, Williams asserts that the Board, after having been temporarily restrained on July 12, 2005 from enforcing its suspension decision, issued a new notice to him on July 14, 2005 and subsequently revoked his license for life. In its revocation order, the Board found, among other things, that Williams had (1) lied by stating that he was ACLS-certified[8]; (2) violated Drug Enforcement Administration regulations; and (3) did not have a valid medical license at the time he treated Ventura. Williams contends that the Board knew these findings to be untrue.

Second, Williams asserts that the Board's bad faith is evidenced by the Board's imposition of the dramatically more onerous sanction of revocation for life from the practice of medicine after its second hearing. Williams further asserts that the Board, in imposing that sanction, relied on substantially the same evidence it had used in suspending Williams' license for one year.

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[7] At a previous hearing in this matter, Williams also appeared to claim that he would suffer irreparable injury absent this Court's review. The irreparable injury exception may be collapsed into the third exception *See Collins v. County of Kendall*, 807 F.2d 95, 98 (7th Cir. 1986) ("A showing of a bad faith . . . is equivalent to a showing of irreparable injury for purposes of the comity restraints defined in *Younger*.") (alteration omitted) (quoting *Wilson v. Thompson*, 593 F.2d 1375, 1382 (5th Cir. 1979))

[8] ACLS is the acronym for Advanced Cardiac Life Support

"A plaintiff asserting [a] bad faith [proceeding] as an exception to *Younger* abstention must allege specific facts to support an inference of bad faith." *Collins,* 807 F.2d at 98. "The *Younger* rule . . . requires more than a mere allegation and more than a 'conclusory' finding to bring a case within the harassment exception." *Grandco Corp. v. Rochford,* 536 F.2d 197, 203 (7th Cir. 1976). "This specific evidence must show that [the] state [proceeding] 'was brought in bad faith for the purpose of retaliating for or deterring the exercise of constitutionally protected rights.'" *Collins,* 807 F.2d at 98 (quoting *Wilson,* 593 F.2d at 1383). The plaintiff thus bears a heavy burden in making out a case of bad faith or harassment. *Phelps v. Hamilton,* 122 F.3d 885, 889 (10th Cir. 1997) (citation omitted). "[T]he subjective motivation of the state authority in bringing the proceeding is critical to, if not determinative of, this inquiry." *Diamond "D" Constr. Corp. v. McGowan,* 282 F.3d 191, 199 (2d Cir. 2002) (citations omitted). "A state proceeding that is legitimate in its purposes, but unconstitutional in its execution – even when the violations of constitutional rights are egregious – will not warrant the application of the bad faith exception." *Id.* (citation omitted). Bad faith "generally means that a prosecution has been brought without a reasonable expectation of obtaining a valid conviction." *Kugler v. Helfant,* 421 U.S. 117, 126 n.6 (1975).

In *Williams v. Red Bank Bd. of Educ.,* 662 F.2d 1008 (3d Cir. 1981), the United States Court of Appeals for the Third Circuit illustrated the

stringency of the bad faith exception. In that case, the plaintiff was a tenured school teacher whose dismissal was sought by the local board of education after the teacher made statements criticizing the board. While the dismissal proceeding was pending, the teacher sued in federal district court, alleging that "the filing of the administrative charges against her had violated her rights under the first and fourteenth amendments." *Id.* at 1011. The Third Circuit agreed with the district court that *Younger's* bad faith exception did not apply:

> [The teacher] has also argued that this case falls within the "bad faith" exception to *Younger* abstention, claiming that "(governmental) actions in retaliation for exercise of First Amendment rights necessarily involve bad faith and harassment." This argument rests on an erroneous reading of an exception to *Younger*. For the district court to find "bad faith," [the teacher] would have had to allege something akin to a *series of prosecutions brought in bad faith "with(out) any expectation of securing a valid conviction;"* or a prosecution brought under a statute "flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whomever an effort might be made to apply it." [The teacher's] complaint makes no such allegations, as the district court pointed out, and accordingly we

> find no error in the district court's rejection of her argument.

Id. at 1022 n.14 (emphasis supplied; citations omitted).

Here, Williams has not even alleged, much less adduced any quantum of evidence, that he has ever before been pursued by the Board in his approximately two-and-one-half decades of practicing medicine in the Virgin Islands. Nor has Williams provided any evidence tending to show that the Board's actions were fueled by nefarious motives. Instead, Williams merely contends that "he is the only doctor in the . . . Virgin Islands to have been subjected to a licensing requirement that did not apply to any other doctor at the time of the 2005 hearing." (Pl.'s Abstention Br. 10.) That contention, even if accepted as true, is unsubstantiated by evidence that the Board knew of other doctors' similar alleged wrongdoing and did not pursue those doctors as it did Williams.[9] *See, e.g., Pincham v. Illinois*

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[9] Testimony at the November 17, 2008, hearing indicated that no other Virgin Islands medical doctor has been disciplined by the Board as a result of the death of a patient. However, that same testimony also indicated that Williams' case is among the only in which the Board has been affirmatively notified of such a death via a letter of complaint. (One other doctor who was the subject of such a letter elected not to defend himself before the Board). The fact that the Board has not investigated other doctors whose patients have died while in their care is consistent with Virgin Islands law governing the functioning of the Board. *See* V.I. Code Ann. tit. 27, § 3(d)(9) ("The Board . . . shall have, at a minimum, the following powers and responsibilities:

(Continued on following page)

Judicial Inquiry Bd., 872 F.2d 1341, 1350 (7th Cir. 1989) ("Even if we accept Justice Pincham's allegation that other judges engaged in activity equivalent to his and were not disciplined, we refuse to conclude that there was 'bad faith' absent allegations that the state agencies had some awareness of the other judges' activities and treated them more favorably than Justice Pincham. . . ."); *see also United States v. Smith*, 231 F.3d 800, 810 (11th Cir. 2000).

Because Williams has failed to allege specific facts, supported by competent evidence, demonstrating that the Board singled him out for disciplinary proceedings or sought to retaliate against him, Williams has fallen short of his burden of establishing the Board's bad faith. *See, e.g., Diamond "D" Constr. Corp.*, 282 F.3d at 200 (finding the bad faith exception inapplicable where there was no evidence that either the investigation was "driven by

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. . . *Receive, review and investigate complaints* against practitioners for whose licensure they are responsible. . . .") (emphasis supplied).

Williams also presented testimony that the Board did not specifically investigate any of the emergency medical technicians or other doctors at the hospital who cared for Ventura immediately before her death. To the extent Williams relies on that testimony to show that he was singled out for disciplinary action, that reliance is misplaced. That testimony also reflects that the Board took evidence from everyone involved in Ventura's medical treatment and carefully considered everyone's role on an individual basis. What Williams characterizes as singling out is really an expression of his disagreement with the Board's conclusion about his particular role in Ventura's death.

a retaliatory motive or by some other nefarious purpose" or that the plaintiff had been "singled . . . out for adverse treatment"); *Schlagler v. Phillips,* 166 F.3d 439, 443-44 (2d Cir. 1999) (holding that because the prosecution was not animated by a retaliatory motive and was merely "a straightforward enforcement of the laws of New York, [the] case does not fall within the bad faith exception[.]").

Williams also contends that abstention is unwarranted because of the extraordinary circumstances of this case.

In *Kugler v. Helfant,* 421 U.S. 117 (1975), the Supreme Court fleshed out the extraordinary circumstances exception:

> Only if 'extraordinary circumstances' render the state court incapable of fairly and fully adjudicating the federal issues before it, can there be any relaxation of the deference to be accorded to the state criminal process. The very nature of 'extraordinary circumstances,' of course, makes it impossible to anticipate and define every situation that might create a sufficient threat of such great, immediate, and irreparable injury as to warrant intervention in state criminal proceedings. But whatever else is required, such circumstances must be 'extraordinary' in the sense of creating an extraordinarily pressing need for immediate federal equitable relief, not merely in the sense of presenting a highly unusual factual situation.

Id. at 124. "While *Kugler* spoke in the context of criminal prosecutions, the same standard applies in the civil context." *Diamond "D"*, 282 F.3d at 201 (citing *Moore v. Sims*, 442 U.S. 415, 433 (1979)). The Supreme Court has found extraordinary circumstances to exist on only two occasions: (1) "when a state statute is flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whomever an effort might be made to apply it"; and (2) "when the state administrative agency was incompetent by reason of bias to adjudicate the issues pending before it[.]" *Id.* (quotation marks and citations omitted).

Williams does not invoke the first example of an exceptional circumstance articulated in *Kugler*. Instead, Williams claims that the Board is biased against him.[10]

"Bias exists where a court has prejudged, or reasonably appears to have prejudged, an issue." *Kenneally v. Lungren*, 967 F.2d 329, 333 (9th Cir.

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[10] In fact, Williams collapses his bias argument into the bad faith exception. Courts, however, generally fold bias into the extraordinary circumstance exception. *See Kugler*, 421 U.S. (recognizing bias as an example of the "exceptional circumstances" warranting federal intervention); *Esso Std. Oil Co. v. Lopez-Freytes*, 522 F.3d 136, 143 (1st Cir. 2008) ("Among those extraordinary circumstances are cases in which extreme bias completely renders a state adjudicator incompetent and inflicts irreparable harm upon the petitioner."). In accordance with these decisions, this Court adopts a similar approach

1992) (quotation marks and citation omitted). "[T]he baseline showing of bias necessary to trigger *Younger's* escape mechanism requires the plaintiff to offer some evidence that abstention will jeopardize his due process right to an impartial adjudication." *Brooks v. New Hampshire Supreme Court,* 80 F.3d 633, 640 (1st Cir. 1996) (citations omitted). "To implicate due process, claims of general institutional bias must be harnessed to a further showing, such as a potential conflict of interest, or a pecuniary stake in the outcome of the litigation[.]" *Id.* (internal citations omitted). Furthermore, a litigant alleging bias

> must overcome a presumption of honesty and integrity in those serving as adjudicators; and [he] must convince [the court] that, under a realistic appraisal of psychological tendencies and human weakness, conferring investigative and adjudicative powers on the same individuals poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented.

Withrow v. Larkin, 421 U.S. 35, 47 (1975).

In support of his bias claim, Williams contends that he is in direct competition with Michelle Dizon ("Dizon"), another St. Croix medical doctor and a member of the Board during the disciplinary proceedings against him. Williams argues that the Board overlooked or ignored that conflict and improperly permitted Dizon to participate in those proceedings.

Williams relies on the Supreme Court's decision in *Gibson v. Berryhill,* 411 U.S. 564 (1973).

In *Gibson,* the Alabama Optometric Association (the "AOA") filed charges against various optometrists with the Alabama Board of Optometry (the "ABO"), the statutory body with authority to issue, suspend, and revoke licenses for the practice of optometry. The AOA alleged that the optometrists had engaged in unprofessional conduct, as defined by Alabama statute, and therefore were practicing their profession unlawfully. The AOA noticed a hearing on the allegations. Before the hearing date, the optometrists sued the ABO and the AOA in federal district court, alleging 42 U.S.C. § 1983 violations and seeking injunctive relief on the ground that the statutory scheme regulating the practice of optometry was unconstitutional. At bottom, the optometrists alleged that the Board was biased.

A three-judge district court panel held that *Younger* abstention was inappropriate because "the administrative process was so defective and inadequate as to deprive the plaintiffs of due process of law." *Gibson,* 411 U.S. at 570. Specifically, the district court first found that the ABO, "which acts as both prosecutor and judge in delicensing proceedings, had previously brought suit against the plaintiffs on virtually identical charges in the state courts." *Id.* at 571. Second, the district court found that ABO members would receive a windfall in business if the plaintiff optometrists were delicensed. In other words, the district court found that the ABO

members' personal financial stake disfavored abstention. Finally, the district court regarded the ABO "as a suspect adjudicative body . . . , because only members of the [AOA] could be members of the [ABO], and because the [AOA] excluded from membership optometrists such as the plaintiffs who were employed by other persons or entities." *Id.* Thus, in the district court's view, "to require the Plaintiffs to resort to the protection offered by state law in these cases would effectively deprive them of their property, that is, their right to practice their professions, without due process of law and that irreparable injury would follow in the normal course of events." *Id.* (citation omitted).

The Supreme Court affirmed, agreeing with the district court that the ABO "was incompetent by reason of bias to adjudicate the issues pending before it." *Id.* at 577. The Court based its decision on the ABO members' personal financial stake, reasoning that "those with substantial pecuniary interest in legal proceedings should not adjudicate these disputes" and noting as well that "most of the law concerning disqualification because of interest applies with equal force to . . . administrative adjudicators." *Id.* at 579 (alteration in original; quotation marks and citations omitted).

The *Gibson* Court rooted its conclusion of unconstitutional bias in its finding that the ABO members all had a "substantial pecuniary interest" in the outcome of proceedings in which they served as adjudicators. 411 U.S. at 579. In contrast, Williams

has presented little, if any, persuasive evidence that Dizon and he are in competition with each other or that Dizon has even a slight pecuniary interest in the outcome of the Board's proceedings against Williams. Williams' reliance on *Gibson* is therefore unavailing.[11] *See, e.g., Hammond v. Baldwin,* 866 F.2d 172, 177 (6th Cir. 1989) (holding that because the plaintiffs "have alleged no personal pecuniary interest on the part of any particular officials who were to preside over their claims . . . , *Gibson* simply is inapposite").

In addition to his claim of bias, Williams characterizes his inability to practice medicine as another exceptional circumstance triggering the need for federal intervention. Williams does not allege that he has been precluded from practicing medicine or from seeing patients. Rather, Williams has presented evidence that he cannot submit insurance claims for reimbursement, resulting in a loss of income.

In *Diamond "D" Constr. Corp. v. McGowan,* the Second Circuit declined to answer the question whether the threat to the viability of the plaintiff's business could constitute an extraordinary circumstance under *Younger. See Diamond "D",* 282 F.3d at

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[11] Williams is a family medicine practitioner while Dizon is an endocrinologist. Williams testified that endocrinology constitutes approximately eighty percent of his business. Williams included his treatment of diabetes in arriving at that figure. Neither Williams nor the Defendants called Dizon as a witness. Significantly, Williams' testimony on this point does not establish the sort of direct pecuniary interest that *Gibson* requires.

201-02. Instead, the court observed that the plaintiff's argument that its business would suffer injury because of the sluggishness of the state proceeding was severely undercut by the plaintiff's election not to file a mandamus proceeding in state court to compel the state administrative body to provide expeditious review. *See id.* at 202. The court reiterated that "where such state remedies are available, 'a federal court should assume that state procedures will afford an adequate remedy, in the absence of unambiguous authority to the contrary.'" *Id.* (quoting *Pennzoil,* 481 U.S. at 15).

Here, like the plaintiff in *Diamond "D",* Williams has offered no reason why he has not challenged the Board's actions in the local courts. His failure to do so undermines his argument that this matter manifests an "extraordinarily pressing need," *Kugler,* 421 U.S. at 124, for this Court's immediate review.

To the extent Williams premises his exceptional circumstances argument on the Board proceedings' supposed lack of procedural safeguards, he still falls outside the broad definition of exceptional circumstances articulated in *Kugler.* Williams' mere assertion that the Board's proceedings are arbitrary and capricious, and consequently deprived him of due process, does not suffice on its own to warrant federal intervention. *See, e.g., Gray v. Pagano,* No. 07-3433, 2008 U.S. App. LEXIS 16235 (3d Cir. July 23, 2008) (not precedential) (noting that "[t]he Constitution does not guarantee that the decision of state courts

shall be free from error, or require that pronouncements shall be consistent" and thus that "we do not construe the alleged misapplication of state law as violative of substantive federal due process") (citations omitted); *see also Engle v. Isaac,* 456 U.S. 107, 121 n.21 (1982) ("We have long recognized that a mere error of state law is not a denial of due process. . . . If the contrary were true, then every erroneous decision by a state court on state law would come [to the federal courts] as a federal constitutional question.") (quotation marks and citation omitted). While the Board's proceedings may not have been executed with procedural perfection, the public interest was very much at the fore of those proceedings. Indeed, given the Virgin Islands' prevailing interest in the supervision of medical practitioners in the territory, what Williams depicts as the Board's flawed governance is best left to oversight by the local authorities.

IV. CONCLUSION

For the foregoing reasons, the Court will abstain from hearing this matter under the *Younger* doctrine and will dismiss this case.[12] An appropriate judgment follows.

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[12] "[A] district court, when abstaining from adjudicating a claim for injunctive relief, should stay and not dismiss accompanying claims for damages. . . ." *Williams v. Hepting,* 844 F.2d 138, 144-45 (3d Cir. 1988). Here, Williams seeks only equitable relief. Therefore, dismissal with prejudice, rather than a stay, is

(Continued on following page)

/s/ _____
CURTIS V. GÓMEZ
Chief Judge

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appropriate. *See Nivens v. Gilchrist*, 444 F.3d 237, 247 (4th Cir. 2006) ("[W]hen a district court abstains from a case based on *Younger*, it should typically dismiss the case with prejudice; not on the merits.") (citations omitted); *Lui v. Comm'n on Adult Entm't of Del.*, 369 F.3d 319, 327 (3d Cir. 2004) (holding that "a *Younger* abstention stay requires a dismissal with prejudice of the federal suit").

FOR PUBLICATION

IN THE DISTRICT COURT
OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

WILBERT WILLIAMS, M.D., Plaintiff, v. GOVERNMENT OF THE VIRGIN ISLANDS, BOARD OF MEDICAL EXAMINERS: THELMA R. WATSON, FRANK A. ODLUM; and JOSEPH DeJAMES, Defendants.	)	Civil No. 2005-97

ATTORNEYS:

Joel H. Holt, Esq.
St. Croix, U.S.V.I.
For the plaintiff.

Aquannette Y. Chinnery-Montell, Esq.
Tamika Archer, Esq.
Terrlyn Smock, Esq.
Carol Thomas-Jacobs, Esq.
St. Thomas, U.S.V.I.
For the defendants.

JUDGMENT

(Filed Dec. 3, 2008)

GÓMEZ, C.J.

In this matter, the Court must determine whether to abstain in accordance with the doctrine articulated by the Supreme Court in *Younger v. Harris*, 401 U.S. 37 (1971). For the reasons more fully stated in the Memorandum Opinion of even date, it is hereby

ORDERED that the Court will abstain from hearing this matter; it is further

ORDERED that all pending motions are **DENIED** as moot; it is further

ORDERED that the claims of the plaintiff are **DISMISSED** with prejudice; and it is further

ORDERED that the Clerk of Court shall **CLOSE** this case.

S\ _____

CURTIS V. GÓMEZ
Chief Judge

[LOGO]

GOVERNMENT OF THE
VIRGIN ISLANDS OF THE UNITED STATES
– 0 –
DEPARTMENT OF HEALTH
#48 SUGAR ESTATE, ST. THOMAS, U.S.V.I. 00802

June 17, 2005

VIRGIN ISLANDS
BOARD OF MEDICAL
EXAMINERS

Ph. 340-776-8311 x 5074
Fax: 340-777-4001
Direct Line: 340-774-01

Wilbert Williams, Jr., M.D.
252 Glynn
RR 16196
Kingshill, St. Croix, V. I. 00850

Dear Dr. Williams:

It is the unanimous decision of the Virgin Islands Board of Medical Examiners that your license to practice medicine in the United States Virgin Islands is hereby suspended effective immediately for a period of one year. (The attached document provides details, which lead to this decision.) Re-instatement of your license will be contingent on the following conditions being met:

1. Attendance at a Family Practice Board review course (approved by the Board of Medical Examiners).

2. Successful completion of the V. I. SPEX examination (administered in May and November of each year).

3. Successful completion of an American Heart Association Basic Life Support course.

4. Successful completion of an American Heart Association Advanced Cardiac Life Support Course.

5. An oral interview with the Board of Medical Examiners after the above 1-4 has been successfully completed.

Failure to comply with the above terms and conditions within the period of one year shall result in the complete revocation of your license to practice in the United States Virgin Islands.

Sincerely,

/s/ Thelma R. Watson
Thelma R. Watson, M.D.
Chairperson
V.I. Board of Medical Examiners

xc: Commissioner of Health

[LOGO]

**GOVERNMENT OF THE
VIRGIN ISLANDS OF THE UNITED STATES
– 0 –
DEPARTMENT OF HEALTH
#48 SUGAR ESTATE, ST. THOMAS, U.S.V.I. 00802**

June 17, 2005

VIRGIN ISLANDS
BOARD OF MEDICAL
EXAMINERS

**Ph. 340-776-8311 x 5074
Fax: 340-777-4001
Direct Line: 340-774-01**

BEFORE THE BOARD OF MEDICAL EXAMINERS FOR THE TERRITORY OF THE UNITED STATES VIRGIN ISLANDS

**IN THE MATTER OF
WILBERT WILLIAMS, JR., M.D.
ACTION TO SHOW CAUSE**

DECISION

The Board of Medical Examiners (hereafter "Board"), pursuant to Title 27 V.I.C.§§1,2, and 33 convened a Show Cause Hearing on June 9, 2005 to consider and investigate a complaint of negligence against Dr. Wilbert Williams, a physician practicing on St. Croix, Virgin Islands. Dr. Wilbert Williams was notified of the hearing in a letter dated May 31, 2005. Dr. Wilbert Williams appeared at the hearing on June 9, 2005 and was represented by counsel, Attorney Amelia Joseph.

The Board, after reviewing the testimony of witnesses, analyzing documents, medical records and autopsy reports, finds as follows:

1. The SOAP office note does not include any indication of past medical history, medications, review of systems, etc., which would be important in the scenario of a patient that had not been seen recently. From the testimony, only a cursory examination was made and a decision to administer IV morphine and IV fluids followed.

2. Diagnosis of R/O viral syndrome, R/O hemorrhagic cystitis, severe headache, and fever of unknown origin should not warrant intravenous morphine administration, especially in view of only a cursory history and physical examination. This is especially true since the patient was not monitored, and blood pressure and temperature appear on the SOAP note only one time over an almost 4 hour office visit. There is no mention of pulse and respiratory rate – very important when administering a medication that can cause cardiorespiratory depression.

3. There is no mention of the patient being dehydrated. However, 1500mls of IV fluid were administered over 3 hours. Once again, there is no further monitoring aside from only one entry for blood pressure and temperature. There is also no mention of any urinary output, which is important in the face of such aggressive fluid administration. In fact, when asked during the hearing, Dr. Williams stated that the patient was not dehydrated.

4. The EMS daily operations log shows a call to them at 9:22 pm. The office records state a call to EMS being placed at 8:45 pm. The medical records mention patient being unresponsive to verbal and painful stimuli. Once again, there is no mention of any vital signs. There is no indications that the patient's respiratory status and/or circulation were evaluated when she was noted to be unresponsive. In fact, when questioned at the hearing, Dr. Williams admitted that these were not assessed.

5. There was continuous mention, by Dr. Williams, of the patient being "pink" as the sole means of assessing breathing and pulse. The patient's daughter testified that the patient was lying on the bed not breathing. EMS records and testimony indicate that the patient was cyanotic upon their arrival. Dr. Williams repeatedly testified that a cardiac monitor was necessary to determine the status of a patient's pulse. There is no testimony by Dr. Williams, documentation in neither notes, nor indication by family or EMS that any evaluation was made by Dr. Williams as to the patient's airway and breathing. There was testimony by family and documentation by EMS that no CPR was being performed in the office prior to EMS' arrival.

6. EMS documentation mentions patient was found to be cyanotic on their arrival. EMS documentation mentions patient being transferred to a long board. Family mentions that EMS had applied a breathing mask while the patient was being taken to the ambulance. EMS testimony revealed that the patient was coded once it was discovered

that the patient was a full code. It is customary that intubation and ACLS protocols be instituted in the back of the ambulance.

7. The EMS log and testimony show a detailed description of what was done to resuscitate the patient in the ambulance. Dr. Williams' testimony seemed to try to place blame on EMS for not placing the monitor on the patient immediately in his office.

8. Review of the Medical Examiner's report reveals cause of death as severe bilateral bronchopneumonia with myocarditis and pericarditis. This was precipitated by anoxic brain injury, which would have been due to apnea, which was caused by levels of morphine that were three times the upper level of its therapeutic range. Dr. Williams' testified and reported that he used morphine due to less side effects of nausea and also because of its greater efficacy when compared to Meperidine. Dr. Williams' also testified that he has only used morphine maybe (4) four times in his 25 year career. Dr. Williams' could not verbalize where he obtained the morphine. Additionally, Dr. Williams' stated that he destroyed all of the morphine in his office the night of April 15, 2005.

9. Dr. Williams' note describes 2 doses of 2.5 milligrams of morphine given to the patient one hour and twenty minutes apart. Upon questioning Dr. Williams there was a lot of hesitation and uncertainty about the concentration of Morphine and volume in each vial. He finally stated that each vial contained 2 mg. of Morphine in 1 ml

> solution. When asked about the number of vials used for each dose, there was a great deal of uncertainty. Administration of a total dose of 5 milligrams of morphine could not cause the high level of free morphine found on the medical examiner's report.

In conclusion, the Board finds that Dr. Wilbert Williams acted negligently in the treatment of this patient by administering inappropriate medication and treatment to this patient in his office. Furthermore, there was no evidence of any monitoring of the patient's vital signs. When the patient became unresponsive, the physician failed to demonstrate that he possessed basic medical proficiency. Because there was no evaluation of this patient by standard basic life support protocols and no basic resuscitative measures initiated, this patient deteriorated to the point of being found cyanotic and in full cardiac arrest upon EMS' arrival.

Additionally, Dr. Williams cannot verify, either through testimony or records, the actual amount of the drug Morphine that was administered to the patient. Also, Dr. Williams could not recall where he obtained or purchased the Morphine and immediately after the crisis in his office, he destroyed all traces of the Morphine, including vials and labels. Dr. Williams also testified that he has used Morphine no more than four times in the last twenty-four years of practicing medicine, which clearly indicates an unfamiliarity with the use of the medication.

Based on the above findings of fact, it is the unanimous decision of the Board of Medical Examiners that the license to practice medicine of Dr. Wilbert Williams in the United States Virgin Islands is hereby suspended effective immediately for a period of one year. Re-instatement will be contingent on the following conditions being met:

1. Attendance at a Family Practice Board review course (approved by the Board of Medical Examiners).

2. Successful completion of the V. I. SPEX examination (administered in May and November of each year)

3. Successful completion of an American Heart Association Basic Life Support course.

4. Successful completion of an American Heart Association Advanced Cardiac Life Support Course.

5. An oral interview with the Board of Medical Examiners after 1-4 above has been successfully completed.

Failure to comply with the above terms and conditions within the period of one year shall result in the complete revocation of the license to practice in the United States Virgin Islands.

NOT PRECEDENTIAL – NOT FOR PUBLICATION

IN THE DISTRICT COURT
OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

WILBERT WILLIAMS, MD, Plaintiff, v. GOVERNMENT OF THE VIRGIN ISLANDS, BOARD OF MEDICAL EXAMINERS: COMMISSIONER OF HEALTH, DARLENE CARTY, THELMA R. WATSON, Defendants.	)	CIVIL NO. 2005/0097

MEMORANDUM OPINION

(Filed Jul. 12, 2005)

Finch, J.

THIS MATTER comes before the Court on the Motion for a Temporary Restraining Order filed by Defendant Wilbert Williams, M.D. Dr. Williams seeks the immediate reinstatement of his medical license, which was suspended by Defendant Government of the Virgin Islands Board of Medical Examiners on June 17, 2005. A hearing was held on the temporary restraining order application on July 12, 2005.

I. Jurisdiction

Dr. Williams alleges that his constitutional right to a procedural due process guaranteed under the Fourteenth Amendment was violated by Defendant the Board of Medical Examiners, which is an administrative body of the Government of the Virgin Islands, *see* 3 V.I.C. § 415, by depriving him of his property interest in his medical license. This suffices to state a claim for violation of 42 U.S.C. § 1983. The Court has original jurisdiction under 28 U.S.C. § 1331 over all civil actions arising under the laws of the United States. Defendants have not contested this Court's jurisdiction.

II. Standard for Issuing Temporary Restraining Order

This Court may grant a temporary restraining order

> only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required.

Fed. R. Civ. P. 65(b).

The Court applies the same standard for issuing a temporary restraining order as it does for issuing a preliminary injunction. *Bieros v. Nicola*, 857 F. Supp. 445, 446 (E.D. Pa. 1994); *see also Nutrasweet Co. v. Vit-Mar Enterprises, Inc.*, 112 F.3d 689, 693 (3d Cir. 1997) ("[A] temporary restraining order continued beyond the time permissible under rule 65 must be treated as a preliminary injunction, and must conform to the standards applicable to preliminary injunctions."). "[T]o obtain a preliminary injunction, plaintiffs must show both (1) that they are likely to experience irreparable harm without an injunction and (2) that they are reasonably likely to succeed on the merits." *Adams v. Freedom Forge Corp.*, 204 F.3d 475, 484 (3d Cir. 2000). The Court must also consider whether granting preliminary relief will result in even greater harm to the nonmoving party and whether granting the preliminary relief will be in the public interest. *Council of Alternative Political Parties v. Hooks*, 121 F.3d 876, 879 (3d Cir. 1997).

III. Notice to Defendants

Defendants argue that the Court should not consider Dr. Williams' application for a temporary restraining order because they have not been properly served. However, insufficiency of process is not a basis for denying a temporary restraining order. Indeed, Rule 65(b) contemplates the issuance of temporary restraining orders even absent any notice to the opposing party. In this case, Defendants had

notice and appeared, through counsel, at the hearing on the motion for a temporary restraining order.

IV. The Merits of the Application

A. Irreparable Harm

Dr. Williams submitted a declaration in support of his motion for a temporary restraining order stating that he will suffer irreparable harm for any period of time that he is unable to practice his profession. He avers that he will suffer immediate financial harm, as well as future harm, as a result of the damage of his reputation. A consequence of being forced to suspend his practice of medicine is that he will not be able to support his family which includes seven children some of whom are in college.

Although monetary injury is generally an insufficient ground for injunctive relief, Dr. Williams, if ultimately vindicated, may have no apparent action to recover the monetary loss sustained during his suspension. *See Greene v. Bowen*, 639 F. Supp. 554, 563 (E.D. Cal. 1986). Thus, the monetary deprivation that Dr. Williams will experience during his suspension is irreparable.

"[I]rreparable harm is presumed to flow from a constitutional violation which is not fully compensable by monetary damages." *Bordelon v. Chicago School Reform Bd. of Trustees*, 8 F.Supp.2d 779, 789 (N.D. Ill. 1998). Dr. Williams will suffer non-economic damages that are not fully compensable through a monetary

award. Dr. Williams losses are "intangible and nebulous, for they are bound up with such benefits as job satisfaction, professional growth and development, service to the community and professional advancement." *Id.* For every day that Dr. Williams' license is suspended he is "denied the opportunity to perform his chosen profession." *Id.* the non-economic damages suffered by Dr. Williams during the period of his suspension are, therefore, also irreparable.

The Court finds that the first criteria for granting a temporary restraining order has been met. Dr. Williams will suffer irreparable harm if the Court does not take immediate action.

B. Likelihood of Success

"The case law clearly recognizes a protected property interest in a physician's license to practice medicine." *Lowe v. Scott*, 959 F.2d 323, 339 (1st Cir. 1992). "The fourteenth amendment prohibits state deprivations of life, liberty, or property without due process of law." *Unger v. National Residents Matching Program*, 928 F.2d 1392, 1395 (3d Cir. 1991).

Dr. Williams contends that his physician's license was suspended without due process *inter alia* in that he was not advised of the charges against him or the nature of the form of the sanctions that the Court would consider imposing. The only notification that Dr. Williams received was a letter from the chairperson of the Virgin Islands Board of Medical

Examiners dated May 31, 2005, which he states that he received on June 3, 2005, stating, in its entirety:

> Dear Dr. Williams:
>
> The Virgin Islands Board of Medical Examiners received a letter of concern regarding the care you administered to patient **Lydia Ventura** on April 15, 2005. Based on the preliminary information reviewed by the Board at its May 26, 2005 meeting, the Board is hereby requesting the following:
>
> - Submission of a written report by you detailing Lydia Ventura's medical treatment on April 15, 2005, with any and all patient records attached thereto, to the V.I. Board of Medical Examiners within five days of receipt of this letter.
>
> - Your appearance before the V.I. Board of Medical Examiners for a Show Cause Hearing on June 9, 2005 at 8:30 a.m. at the Commissioner of Health Conference Room #3030 – Charles Harwood Memorial Complex, Christiansted, St. Croix.
>
> Your failure to comply with any of the above may result in the summary suspension of your V.I. Medical license, until a complete investigation is completed.
>
> Your cooperation is appreciated.

Dr. Williams explained his interpretation of this letter in his declaration:

> When I received the letter . . . , I had no idea that there would be a hearing where disciplinary action might be taken against me, as I thought the Board was simply engaging in a fact finding process in trying to understand what happened since they simply asked me to produce my records and attend the meeting. Indeed, I thought the only way I could be disciplined was by not attending the hearing as indicated in the letter.

The Court finds Dr. Williams's conclusion that the Show Cause Hearing was a preliminary hearing to be reasonable particularly in light of the reference to the undertaking of a complete investigation in the last sentence.

The Third Circuit in reviewing the suspension of three attorneys' suspensions from the practice of law in the Virgin Islands cautioned:

> The party against whom sanctions are being considered is entitled to notice of the legal rule on which the sanctions would be based, the reasons for the sanctions, and the form of the potential sanctions. Without such notice, the opportunity to be heard would be meaningless; only with this information can a party respond to the court's concerns in an intelligent manner. In other words, a party cannot adequately defend himself against the imposition of sanctions unless he or she is aware of the issues that must be addressed to avoid the sanctions.

In re Tutu Wells Contamination Litigation, 120 F.3d 368, 379 (3d Cir. 1997) (citations and quotations omitted). The Court believes that these same contours of process is due in the context of the suspension of a physician's license.

Dr. Williams was not notified of the legal rule permitting the Board of Medical Examiners to sanction him, of the reasons for the sanctions or the form of the potential sanctions. Therefore, Dr. Williams was denied the opportunity to respond to the Board's concerns in an intelligent manner so as to address the issues necessary to avoid the sanctions. The Court concludes that Dr. Williams has shown that he has a strong likelihood of success on the merits.

C. Balancing of the Harm

Defendants claim that the public will be harmed if Dr. Williams is allowed to continue to practice medicine at present. Dr. Williams responds that he has successfully practiced medicine in St. Croix for over 25 years and has taken training suggest by the Board. The Board does not refute Dr. Williams' argument except to refer the Court to the findings issued after the hearing conducted without adequate notice to Dr. Williams. Because, as discussed, it is likely that the hearing was conducted in violation of Dr. Williams' fourteenth amendment rights, the Court will not rely on the Board's findings in considering the balance of the harm. Thus, the Court considers that Dr. Williams has prevailed in demonstrating

that the balancing of the harm weighs in favor of issuing a temporary restraining order.

D. The Public Interest

The public interest points strongly to the issuance of a temporary restraining order. The Fourteenth Amendment prohibits state interference with protected property interests without due process of law. It is the role of the Court to uphold the Fourteenth Amendment so that people will be secure in their fundamental rights.

V. Conclusion

Dr. Williams motion for a temporary restraining order is meritorious. Dr. Williams has demonstrated that he will suffer irreparable harm if his physician's license is not properly restored. He has shown a strong likelihood of success on the merits. The balancing of harm tilts in favor of the issuance of a temporary restraining order as does the public interest. Accordingly, the Court will enjoin the Board of Medical Examiners from enforcing its June 17, 2005 decision, suspending Dr. Williams' physician's license and imposing conditions for its restoration. However, today's ruling does not impede the Board of Medical Examiners from taking any future action against Dr. Williams after affording him reasonable notice and an opportunity to be heard.

ENTER:

DATE: July 12, 2005 /s/ Raymond L. Finch
Raymond L. Finch
Chief Judge

ATTEST
Wilfredo F. Morales

/s/ Theresa S. Thomas
Deputy Clerk

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS DIVISION OF ST. CROIX

WILBERT WILLIAMS, MD, Plaintiff, v. GOVERNMENT OF THE VIRGIN ISLANDS, BOARD OF MEDICAL EXAMINERS: COMMISSIONER OF HEALTH, DARLENE CARTY, THELMA R. WATSON, Defendants.	)	CIVIL NO. 2005/0097

ORDER

(Filed Jul. 12, 2005)

THIS MATTER comes before the Court on the Motion for a Temporary Restraining Order filed by Defendant Wilbert Williams, M.D. Dr. Williams seeks the reinstatement of his medical license, which was suspended by Defendant Government of the Virgin Islands Board of Medical Examiners on June 17, 2005, pending the outcome of this matter. A hearing was held on the temporary restraining order application on July 12, 2005.

For the reasons stated in the accompanying Memorandum Opinion it is hereby

ORDERED that the Dr. Williams' Motion for a Temporary Restraining Order is **GRANTED**;

that Defendant Board of Medical Examiners is **ENJOINED** from enforcing its June 17, 2005 decisions suspending Dr. William's license to practice medicine and imposing conditions for its restoration, pending further Order of this Court; and that a hearing on Dr. Williams' Motion for a Preliminary Injunction will be held at **10:00 A.M. on Friday, August 5, 2005** at the District Court of the Virgin Islands in St. Croix.

ENTER:

DATE: July 12, 2005 /s/ Raymond L. Finch
Raymond L. Finch
Chief Judge

ATTEST
Wilfredo F. Morales

/s/ Theresa S. Thomas
Deputy Clerk

cc: Magistrate Judge George W. Cannon, Jr.
Joel H. Holt, Esq.
Melvin Evans, Jr., Esq.
Margaret Brown, Deputy Clerk

[LOGO]

GOVERNMENT OF
THE VIRGIN ISLANDS OF THE UNITED STATES
-0-
DEPARTMENT OF HEALTH
#48 SUGAR ESTATE, ST. THOMAS U.S.V.I. 00802

VIRGIN ISLANDS
BOARD OF MEDICAL EXAMINERS

Ph. 340-776-8311 x 5074
Fax: 340-777-4001
Direct Line: 340-774-01

July 14, 2005

VIA HAND DELIVERY

Wilbert Williams, Jr., MD
Agape Management Inc.
RR1 6196
Kingshill, VI 00850

RE: Notice of Show Cause Hearing for Disciplinary Purpose

Dear Dr. Williams:

Pursuant to Title 27, Chapter 1, Section 2 of the Virgin Islands Code, the Board of Medical Examiners has the power and duty to fully investigate any and all complaints against practitioners for whose licensure they are responsible, and take appropriate disciplinary action, including censure, probation, suspension or revocation of license when facts are substantiated to support such action. The Board received a letter of inquiry regarding the treatment of Lydia Ventura in your office. (A copy is attached herewith). As a result

the Board has been investigating the treatment administered by you to patient Lydia Ventura on April 15, 2005.

The Board of Medical Examiners is requiring that you appear before the body on Monday, August 1, 2005 at 8:30 A.M. at the Commissioner of Health Conference Room #3030, Charles Harwood Memorial Complex, Christiansted, St. Croix. As authorized by the laws of the Virgin Islands, the Board will convene the Show Cause Hearing to take whatever disciplinary action it deems reasonable based on the facts obtained by the Board.

As a consequence of the facts obtained, the Board may censure, suspend or revoke your license to practice medicine in the United States Virgin Islands or take any other action that it deems reasonable under the circumstances if the Board finds that your treatment of the patient did not meet acceptable standards of care.

You are advised that you must bring to the hearing any and all original records, documents, registers or other information regarding your evaluation and treatment of patient Lydia Ventura on April 15, 2005. The Board further requests that you also bring the entire medical record of patient Lydia Ventura including treatment records prior to April 15, 2005.

At this hearing you may be represented by counsel and bring witnesses. Additionally, you will be required to answer questions concerning the treatment of patient Lydia Ventura. By July 25, 2005

please submit your list of witnesses and a written report, by you, detailing Lydia Ventura's medical treatment on April 15, 2005 to the Board of Medical Examiners.

Your failure to appear or comply with any requirements of the Board shall result in the immediate suspension of your Virgin Islands Medical license.

Your cooperation is appreciated.

Sincerely,

/s/ Thelma R. Watson, MD
Thelma R. Watson, MD
Chairperson

**IN THE DISTRICT COURT
OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

WILBERT WILLIAMS, MD., Plaintiff, v. GOVERNMENT OF THE VIRGIN ISLANDS, BOARD OF MEDICAL EXAMINERS: COMMISSIONERS OF HEALTH, DARLENE CARTY, THELMA R. WATSON, Defendants.	)	CIVIL NO. 2005/0097

ORDER

(Filed Jul. 22, 2005)

Since the parties having stipulated to a permanent injunction on the record and there is no further relief sought in this matter, it is hereby

ORDERED that this case is **CLOSED**.

ENTER:

DATE: July 22, 2005 /s/ Raymond L. Finch
Raymond L. Finch
Chief Judge

ATTEST
Wilfredo F. Morales

/s/ Theresa S. Thomas
Deputy Clerk

cc: Magistrate Judge George W. Cannon, Jr.
Joel H. Holt, Esq.
Melvin Evans, Jr., Esq.
[/s/ K.R. 7/22/05]

IN THE DISTRICT COURT
OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

WILBERT WILLIAMS, MD Plaintiff, v. GOVERNMENT OF THE VIRGIN ISLANDS, BOARD OF MEDICAL EXAMINERS: COMMISSIONERS OF HEALTH, DARLENE CARTY, THELMA R. WATSON, Defendants.	CIVIL NO. 2005/0097 ACTION FOR INJUNCTIVE AND DECLARATORY RELIEF

ORDER

(Filed Aug. 08, 2005)

This matter is before the Court on the plaintiff's motion to reopen the above captioned matter pursuant to Rules 59 and 60 of the Federal Rules of Civil Procedure. Upon consideration of the matters before the Court and being otherwise advised of the premises, it is hereby

ORDERED

THAT the motion is **GRANTED and the case is hereby reopened**.

Dated 8/4/05

/s/ Raymond Finch
HONORABLE JUDGE
RAYMOND FINCH

ATTEST: WILFREDO MORALES
Clerk of Court

BY: /s/ Thamala N. Serrano
Deputy Clerk

dist: Joel H. Holt, Esq.
Melvin Evans, Jr., Esq.
[/s/ K.K. 8/4/05]

[LOGO]

GOVERNMENT OF THE
VIRGIN ISLANDS OF THE UNITED STATES
DEPARTMENT OF HEALTH
#48 SUGAR ESTATE, ST. THOMAS, U.S.V.I. 00802

VIRGIN ISLANDS
BOARD OF MEDICAL
EXAMINERS

Ph. 340-776-8311 x

In the matter of

Wilbert Williams, JR., M.D.

Final Order

As per Title 27, chapter 1, Section 2 of the Virgin Islands Code which describes the powers and duties of the Board of Medical Examiners, a matter came before the Virgin Islands Board of Medical Examiners for investigation and for appropriate disciplinary action should the facts substantiate such action.

Summary of Case L.V.

On April 15th 2005, patient L.V. was seen in Dr. Williams' office for complaints of Head ache, abdominal pain and fever. She was accompanied by her daughter. She was treated in the office over a 3 hour period with IV fluids and IV Morphine. During the course of that treatment the patient became unresponsive and suffered a cardiac arrest. EMS responded, confirmed asystole, initiated ACLS protocol and transferred the patient to the Juan Luis Hospital.

The patient subsequently died – Diagnosis: anoxic brain injury.

A hearing was held on 9/12/2005

After careful review of the testimony at the hearing of 9/12/05, evaluation of the attendant medical records, and study of the submitted exhibits, the US Virgin Islands Board of Medical Examiners finds the following to be fact:

Ms. Lydia Ventura was hemodynamically stable when she presented to Dr. Williams' office. Testimony by Ms. Ventura's daughter states that, aside from appearing uncomfortable, she was not moaning and groaning and was not in the fetal position. Dr. Williams stated that Ms. Ventura never became unstable during the period of time she was at his office until she became comatose. Dr. Williams administered aggressive fluid resuscitation and administered morphine via the IV route to treat what is described by Dr. Williams as "intractable pain". Dr. Williams stated that a person can tolerate 3000ml of IV fluid per day so 1500ml over 3 hours should be well tolerated.

Dr. Williams stated that he cannot recall where or when he obtained the morphine that was administered to Ms. Ventura. Dr. Williams mentioned that there were distributors and pharmacies where the morphine could have been obtained. He named three as the possible source of the morphine; Henry Schein, Darby and Golden Rock Pharmacy. Dr. Williams speculated that the morphine may have been "left

over" from a previous patient. Dr. Williams stated that he usually writes a prescription for morphine in a patient's name, the patient picks up the morphine at the pharmacy and brings the morphine to Dr. Williams' office. Dr. Williams then states that he administers the morphine to the patient. Dr. Williams' further stated that he occasionally uses what is left over for other patients presenting to his office. Dr. Williams stated that he does not need to keep records of the morphine used in his office and that he discarded whatever morphine was left in his office the night of Ms. Ventura's treatment.

Aside from one entry in the chart listing Ms. Ventura's vital signs, there is no further documentation of any other vital signs. There was testimony from Dr. Williams and from Ms. Ventura's daughter that Dr. Williams did reassess Lydia Ventura's pulse and breathing periodically. Upon questioning, Dr. Williams stated that, although he did not document these findings, they were "acceptable".

According to Dr. Williams' note, there are entries at 8:15pm and 8:30pm that mention the patient appears to be sleeping and snoring. At 8:45pm, Dr. Williams enters in his record that the patient is not responsive to verbal and painful stimuli and he calls EMS. There is no further mention of the patient's breathing. The only indication of the patient's status is that her color was "pink".

The EMS log shows a call from Dr. Williams' office at 9:22pm. The EMS log lists the arrival of EMS to Dr.

Williams' office at 9:30 pm. The EMS report details the specific treatment rendered to Ms. Ventura once ACLS protocols were instituted for cardiac arrest. The Patient was in asystole.

Review of the hospital records and laboratory findings reveal that upon the patient's arrival to the JFLH ED, she was unresponsive but had a pulse and blood pressure. A CT scan at the time revealed no intracranial bleed and a platelet count of 198,000. Physical findings upon admission were consistent with brain death.

Review of her hospital course revealed that Ms. Ventura remained in that state.

The autopsy report revealed a mild subarachnoid hemorrhage in the parietal and occipital regions as well as mild hemorrhage around the brain stem, cerebellum, and inferior occipital region. It also mentions rupture of one of the small pontine arteries. There were small thrombi in the tertiary vessels of the lungs. There was also focal myocarditis and pericarditis. The level of free morphine was obtained on the blood drawn upon admission to the ER on 4/15/2005 and was found to be 210ng/ml. The reference lab tested the specimen using 2 methodologies simultaneously and the result was confirmed.

Dr. Williams' testimony stated that the treatment rendered in his office was not a precipitating event in the death of Lydia Ventura. Dr. Williams stated that his use of IV fluids and IV morphine for the treatment her "intractable" pain were acceptable ways of

treating her. Dr. Williams stated that his evaluation of Ms. Ventura, after she became unresponsive to verbal and painful stimuli, was adequate since she was not unstable. However, no vital signs were done or recorded. Furthermore, the clinical description of Ms. Ventura is consistent with a Glasgow Coma Scale of 3 which in itself reflects instability and therefore needed intervention (BLS/ACLS protocol). Dr. Williams, as well as the EMS personnel, stated that Dr. Williams did not attempt to resuscitate or provide any airway support for this patient. Dr. Williams' testimony elaborated on the conduct of EMS upon arrival to his office. He stated that EMS "did nothing" on arrival to his office. Upon questioning regarding what EMS should have done, Dr. Williams stated "whatever EMS is supposed to do".

Dr. Williams also stated that he was Advanced Cardiac Life Support (ACLS) certified and held a valid US Virgin Island medical license at the time of his treatment of Lydia Ventura.

Dr. Williams' defense centered around the fact that Lydia Ventura's demise was caused by Dengue Hemorrhagic Fever (DHF) and Dengue Shock Syndrome (DSS). The defense stated that Ms. Ventura presented with fever, headache, body aches, abdominal pain, nausea and vomiting. The defense states that these are all symptoms of dengue fever. The defense exhibited a newspaper article that showed that DSS also manifests in a change from fever to hypothermia, a change in mental status and shock. The defense

states that this is what occurred to cause Ms. Ventura's change in condition and, ultimately, her death.

Dr. Williams' defense questioned the validity of the free morphine level since the test was not repeated.

Dr. Williams' defense also mentioned that his documentation is similar to other local practitioner's and that it was adequate in describing Ms. Ventura's condition.

Upon taking all of the above into consideration, the Board finds:

Dr. Williams did not possess a valid USVI medical license when he treated Mrs. Ventura. on 4/15/2005. IIis check and his renewal application were dated 4/15/2005, the date of this incident.

There are inconsistencies regarding how Ms. Ventura presented to Dr. Williams' office and what her condition was during the time she was there. It was determined that there was inadequate documentation in Dr. Williams' charting for Dr. Williams to prove that Ms. Ventura's condition did not deteriorate and that her vital signs remained stable while she was in his office. This is especially poignant considering that Ms. Ventura was in cardiac arrest upon EMS' arrival.

There was no objective evidence for the use of such vigorous IV fluid administration because there was no indication that Ms. Ventura was either hemodynamically unstable or dehydrated on her arrival to Dr. Williams' office. In fact, her blood pressure was above normal and Dr. Williams stated her pulse was

between 60-100 beats per minute, although this was not documented in his chart. Dr. Williams stated that he used his clinical judgment in determining Ms. Ventura's treatment.

Although morphine is a medication that can be used for the treatment of pain, the diagnosis of viral syndrome, hemorrhagic cystitis, severe headache, and fever of unknown origin are not entities that should be treated with morphine in an office setting, especially via the IV route. In addition when IV Morphine is given in an acute setting, it is standard of care to closely monitor the patient and document the patient's vital signs, especially when the patient does not take morphine on a chronic basis. It is also irregular to administer morphine without having its antidote (naloxone) readily available. Dr. Williams states that he did not have naloxone in his office. Dr. Williams' note does not adequately document Ms. Ventura's vital signs and testimony revealed that aside to listening to her chest for respirations and pulse, there was no further blood pressure monitoring following morphine administration. In fact, the only blood pressure recorded was on admission to the office. Also, when Ms. Ventura was unable to be aroused there were no vital signs done.

It is a violation of Drug Enforcement Agency regulations to acquire morphine for dispensing or administering in a private physician office without obtaining it lawfully. Morphine for office use, can only be obtained via ordering it through DEA form 222. Although it may be acceptable for a physician to write

a prescription for a patient and have that patient return to that physician's office for administration, any remaining morphine must be returned to the patient or issued to a reverse distributor for disposal. Writing a prescription for morphine in a patient's name, with the purpose of office use for other patients, is illegal. Possession of morphine obtained in this manner is unlawful according to Federal Regulations.

It is also a violation of DEA to destroy or discard morphine. DEA regulations stipulate that any unused morphine must be routed through a reverse distributor if it is not going to be used. Dr. Williams testified that he destroyed all of the remaining morphine in his office after this incident. It is also a violation of DEA regulations to prescribe, administer, or dispense controlled substances without having a valid and current State license to practice medicine. Dr. Williams did not possess a valid USVI license on 4/15/2005 when he prescribed and administered morphine to Mrs. Ventura.

There is no indication via testimony or documentation that Dr. Williams performed any basic evaluation of Ms. Ventura's airway, breathing, or circulation (the basics of BLS (Basic Life Support)) when she became unresponsive. There was testimony by Paramedic Majors that Dr. Williams stated to him that the patient was not breathing. EMT Bryan testified that Dr. Williams' wife stated to EMS that the patient was not breathing. Volunteer EMT Rhodes testified that Dr. Williams' wife said the patient was not breathing. Therefore it was "unanimous that she was not

breathing". Testimony by EMS revealed that Dr. Williams was not in physical contact with the patient upon their arrival. Therefore, for an unknown period of time (prior to EMS' arrival) Ms. Ventura was apneic and nothing was being done by Dr. Williams or his staff to provide oxygen or any airway or breathing intervention to her.

Dr. Williams did not recognize that not responding to verbal or painful stimuli renders a patient's Glasgow Coma Scale to be equal 3 (the lowest score possible) meaning Ms. Ventura was in a coma at the time and required life saving measures to be taken. As her treating physician, Dr. Williams did not appropriately treat Ms. Ventura when she became unresponsive and, according to Ms. Ventura's daughter's testimony, "Dr. Williams panicked'.

The US Virgin Islands Board of Medical Examiners agree that dengue fever can present with fever, muscle/joint pain, and nausea/vomiting; but so can multiple other diseases. Following CDC guidelines, dengue hemorrhagic fever (DHF) must also exhibit significant thrombocytopenia, hemorrhagic manifestations such as petechiae, purpura, ecchymosis; gingival bleeding; nasal bleeding, gastrointestinal bleeding; hematuria. This is what distinguishes DHF from other viral syndromes. L.V. did not have any of these except for microscopic hematuria which was most likely caused by her urinary tract infection which was evident on a urinalysis done in Dr. Williams' office.

The CDC carefully defines DHF by 4 essential criteria: 1) Fever; 2) Hemorrhagic manifestations; 3) Low platelets – lower or equal to 100,000; and 4) Objective evidence of leaky capillaries – increased hematocrit, decreased albumin, pleural or other effusions. Ms. Ventura did not meet these criteria when she presented to the ED nor to Dr. Williams' office.

The CDC defines Dengue Shock Syndrome (DSS) as an extension of DHF by requiring the above-mentioned 4 essential criteria for DHF along with rapid/weak pulse, hypotension, cold and clammy skin, and shock. As a patient becomes more ill, they will manifest sustained abdominal pain and persistent vomiting which leads to further deterioration.

Review of records and testimony of the Medical Examiner Dr. Landron, reveal that there were no signs of external bleeding nor any signs of internal bleeding, aside from mild subarachnoid hemorrhaging which could be accounted for by cerebral anoxia or by the process of autopsy itself. Dr. Landron also stated that the autopsy findings are not consistent with death by DHF or DSS. Thrombi are not signs of bleeding. The patient's chest x-ray on arrival to the ED did not reveal any pleural effusions and her platelet count was 198,000. In addition if Dr. Williams was considering DSS as part of his differential diagnosis, it was not documented in his record. In fact Dr. Williams removed Ms. Ventura's IV even though IV fluids are the cornerstone of treatment of DSS. Dr. Williams continually stated that Ms. Ventura's vitals remained stable. If she had been progressing into

DSS her vital signs would not have remained stable, especially her pulse and blood pressure. Dr. Williams did not call EMS to transport her to the hospital for a suspected case of DSS. He called EMS for a patient that was unresponsive.

In summary, on close analysis of Ms. Ventura's case, the diagnosis of DIIS or DSS simply cannot be made.

The US Virgin Islands Board of Medical Examiners accepts the laboratory's value of the level of free morphine found in Ms. Ventura's blood, 210ng/ml, which is 3 times the upper level of therapeutic. The reference lab analyzes specimens by using 2 simultaneous methodologies (with final analysis of these results by the forensic toxicologist) to determine the morphine level in the specimen.

During our meticulous analysis and research of all of the testimony and findings, the Board focused on objective findings in evaluating Dr. Williams' treatment of Ms. Ventura. Although Dr. Williams documented that he administered a total of 5 milligrams of morphine to Mrs. Ventura, he cannot prove this to the Board since he states he does not have records of office morphine use and actually destroyed all the morphine and the morphine containers in his office immediately after Ms. Ventura's treatment. A thorough investigation of Dr. Williams' morphine ordering practices revealed that neither Henry Schein nor Darby had any record of morphine ever being ordered by Dr. Williams. In order to legally order morphine through one of these companies, a DEA form 222

would have to have been completed and a copy is filed with the DEA. The DEA has no record of Dr. Williams ever filling out one of these forms to order any narcotics including Morphine. Dr. Williams stated that he gave Ms. Ventura 1¼ mls of morphine from vials that contained 2mg/ml. Under subpoena, Golden Rock pharmacy provided the Board with copies of prescriptions written for morphine by Dr. Williams. None of these. prescriptions were written for the concentration of morphine that Dr. Williams, under oath, reports giving to the patient. The concentration of morphine on those prescriptions far exceeded 2mg/ml. Therefore administration of 2½ mls far exceeded 5 mg of morphine.

Dr. Williams' defense states that his documentation is similar to other local practitioners. The Board disagrees in that, while Dr. Williams' documentation may be appropriate for a routine office visit, more explicit and careful documentation should have been used in a patient that was treated for over 3 hours and was given a potentially toxic medication.

Dr. Williams' defense stated that the US Virgin Islands Board of Medical Examiners was prejudiced against Dr. Williams. Dr. Williams' defense stated that it objected to Dr. Watson, for being the EMS supervisor, and Dr. Dixon, for being a direct competitor of Dr. Williams, forming part of the Board at the hearing. Dr. Watson is not the EMS supervisor, and Dr. Dixon is an endocrinologist, not a family physician.

The defense stated that the Board was going to take Dr. Williams license to show, regardless of the testimony and evidence, who is in charge of medical licensing.

The Virgin Islands Board of Medical Examiners was appointed by the people of the Virgin Islands through their elected representatives. The primary responsibility and obligation of the Board is to protect the public as it pertains to matters relating to medical care. The Board takes this responsibility very seriously.

In Conclusion:

The US Virgin Island Board of Medical Examiners has determined that Dr. Wilbert Williams acted negligently and irresponsibly in the treatment of Lydia Ventura, and failed to demonstrate basic life support measures in responding to her when she became unresponsive.

The treatment given to Ms. Ventura by Dr. Williams was not typical for an office setting, but more importantly, Dr. Williams was not equipped with the personal knowledge nor tools to deal with the most common complication of this treatment; namely respiratory depression/arrest.

Dr. Williams stated that he is currently ACLS certified, which he is not. This is considered by the Board to be false testimony given at the hearing.

Dr. Williams broke the law by violating DEA regulations – Particularly by obtaining morphine for office use in an unlawful manner, by not keeping records of office morphine, and by disposing the office morphine improperly.

Dr. Williams knowingly and willfully gave false testimony about where the morphine was obtained, and what concentration was used to treat Ms. Ventura.

Finally, at the time of Lydia Ventura's treatment, Dr. Williams did not have an active and valid license to practice medicine in the US Virgin Islands. Renewal applications are due by September 30th. Dr. Williams' check for renewal is dated April 15, 2005, the same day he treated Ms. Ventura. The signature page of his application is dated April 19, 2005. The check, along with the renewal application was mailed to the licensing office and was received April 22, 2005.

Penalty

The Substandard care provided to patient L.V. by Dr. Wilbert Williams Jr. directly resulted in her death.

Dr. Williams demonstrated no recognition nor insight that he provided substandard care and denied even the possibility that he did anything wrong, or could have done anything better. Dr. Williams betrayed the public's trust and demonstrated that he lacks the integrity and skills necessary to practice medicine in the USVI, by:

1) Providing substandard care to Lydia Ventura

2) Providing deliberately false answers concerning where and when he obtained the morphine, the concentration and dosage of the morphine administered.

3) Providing false statements concerning his ACLS certification status

4) Destroying the remaining morphine and vials in his office after the incident,

5) Practicing medicine without an active license and lying to the Board about it during the hearing.

Dr. Williams' refusal to admit his deficiencies in the care of L.V. demonstrates his unfitness to practice Medicine in the United States Virgin Islands.

Wherefore, it is hereby ordered and adjudged that Dr. Wilbert Williams, JR's license to practice Medicine in the Territory of the United States Virgin Islands is hereby REVOKED.

Dated this 26th day of January, 2006

Thelma Ruth Watson, M.D., /s/ Thelma Ruth Watson
Chairman

Frank A. Odlum, M.D., /s/ Frank A. Odlum
Secretary

Claudius L. Henry, M.D., /s/ Claudius L. Henry
Member

Joseph Defames, M.D., /s/ Joseph Defames
Member

Michelle Dixon, M.D., Member /s/ Michelle Dixon

[SEAL]

NOT PRECEDENTIAL –NOT FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISIONS OF ST. CROIX

WILBERT WILLIAMS, MD, Plaintiff, v. GOVERNMENT OF THE VIRGIN ISLANDS, BOARD OF MEDICAL EXAMINERS: COMMISSIONER OF HEALTH, DARLENE CARTY, THELMA R. WATSON, Defendants.	)	CIVIL NO. 2005/0097

MEMORANDUM OPINION

Finch, J.

THIS MATTER, comes before the Court on the Motion for a Temporary Restraining Order filed by Defendant Wilbert Williams, M.D. Dr. Williams seeks the immediate reinstatement of his medical license, which was revoked by a Final Order of Defendant Government of the Virgin Islands Board of Medical Examiners [hereinafter "the Board of Medical Examiners"] entered January 26, 2006. Counsel for the Board of Medical Examiners has been served with Dr. Williams' motion.

I. Jurisdiction

Dr. Williams alleges that his constitutional right to procedural due process guaranteed under the Fourteenth Amendment was violated by the Board of Medical Examiners, which is an administrative body of the Government of the Virgin Islands, *see* V.I.C. § 415, by depriving him of his property interest in his medical license. This suffices to state a claim for violation of 42 U.S.C. § 1983. The Court has original jurisdiction under 28 U.S.C. § 1331 over all civil actions arising under the laws of the United States. Defendants have not contested this Court's jurisdiction.

II. Standard for Issuing Temporary Restraining Order

This Court may grant a temporary restraining order

> only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required.

Fed. R. Civ. P. 65(b).

The Court applies the same standard for issuing a temporary restraining order as it does for issuing a preliminary injunction. *Bieros v. Nicola*, 857 F. Supp. 445, 446 (E.D. Pa. 1994); *see also Nutrasweet Co. v. Vit-Mar Enterprises, Inc.*, 112 F.3d 689, 693 (3d Cir. 1997) ("[A] temporary restraining order continued beyond the time permissible under Rule 65 must be treated as a preliminary injunction, and must conform to the standards applicable to preliminary injunctions."). "[T]o obtain a preliminary injunction, plaintiffs must show both (1) that they are likely to experience irreparable harm without an injunction and (2) that they are reasonably likely to succeed on the merits." *Adams v. Freedom Forge Corp.*, 204 F.3d 475, 484 (3d Cir. 2000). The Court must also consider whether granting preliminary relief will result in even greater harm to the nonmoving party and whether granting the preliminary relief will be in the public interest. *Council of Alternative Political Parties v. Hooks*, 121 F.3d 876, 879 (3d Cir. 1997).

III. The Merits of the Application

A. Irreparable Harm

Dr. Williams submitted a declaration in support of his motion for a temporary restraining order stating that he will suffer irreparable harm for any period of time that he is unable to practice his profession. He avers that he will suffer immediate financial harm, as well as future harm, as a result of the damage to his reputation. A consequence of being

forced to suspend his practice of medicine is that he will not be able to support his family which includes seven children some of whom are in college.

Although monetary injury is generally an insufficient ground for injunctive relief, Dr. Williams, if ultimately vindicated, may have not apparent action to recover the monetary loss sustained during his suspension. *See Greene v. Bowen*, 639 F. Supp. 554, 563 (E.D. Cal. 1986). Thus, the monetary deprivation that Dr. Williams will experience during his suspension is irreparable.

"[I]rreparable harm is presumed to flow from a constitutional violation which is not fully compensable by monetary damages." *Bordelon v. Chicago School Reform Bd. of Trustees*, 8 F.Supp.2d 779, 789 (N.D. Ill. 1998). Dr. Williams will suffer non-economic damages that are not fully compensable through a monetary award. Dr. Williams losses are "intangible and nebulous for they are bound up with such benefits as job satisfaction, professional growth and development, service to the community and professional advancement." *Id.* For every day that Dr. Williams' license is suspended he is "denied the opportunity to perform his chosen profession." *Id.* The non-economic damages suffered by Dr. Williams during the period of his suspension are, therefore, also irreparable.

B. Likelihood of Success

"The case law clearly recognizes a protected property interest in a physician's license to practice medicine." *Lowe v. Scott*, 959 F.2d 323, 339 (1st Cir. 1992). "The fourteenth amendment prohibits state deprivations of life, liberty, or property without due process of law." *Unger v. National Residents Matching Program*, 928 F.2d 1392, 1395 (3d Cir. 1991).

Dr. Williams contends that his physician's license was suspended without due process *inter alia* in that he was not advised of the charges against him. Dr. Williams was notified that "the Board has been investigating the treatment administered by you to patient Lydia Ventura on April 15, 2005," that he "will be required to answer question concerning the treatment of patient Lydia Ventura," and that "[a]s a consequence of the facts obtained, the Board may censure, suspend or revoke your license to practice medicine in the United States Virgin Islands or take any other action that it deems reasonable under the circumstances if the Board finds that your treatment of the patient did not meet acceptable standards of care."

Although Dr. Williams was not notified that he would be charged with not having an active and valid license to practice medicine, violating regulations of the United States Drug Enforcement Agency, and not being ACLS certified, Dr. Williams was forced to respond to such allegations. The Board of Medical Examiners revoked Dr. Williams' license in part

because he did not have an active and valid license, because he "broke the law by violating DEA regulations," and he was not currently ACLS certified and had falsely testified that he was

> The party against whom sanctions are being considered is entitled to notice of the legal rule on which the sanctions would be based, the reasons for the sanctions, and the form of the potential sanctions. Without such notice, the opportunity to be heard would be meaningless: only with this information can a party respond to the court's concerns in an intelligent manner. In other words, a party cannot adequately defend himself against the imposition of sanctions unless he or she is aware of the issues that must be addressed to avoid the sanctions.

In re Tutu Wells Contamination Litigation, 120 F.3d 368, 379 (3d Cir. 1997) (citations and quotations omitted). The Court believes that these same contours of process is due in the context of the revocation of a physician's license.

Because Dr. Williams did not receive notice of the charges against him, Dr. Williams was denied the opportunity to respond to the Board of Medical Examiners' concerns in an intelligent manner so as to address the issues necessary to avoid the sanctions. The Court concludes that Dr. Williams has shown that he has a strong likelihood of success on the merits.

C. Balancing of the Harm

The Court assumes that the Board of Medical Examiners would claim, as it did in the earlier hearing in this matter, that the public will be harmed if Dr. Williams is allowed to continue to practice medicine at present. Dr. Williams responded that he has successfully practiced medicine in St. Croix for over 25 years and has taken training previously suggest by the Board. Because, as discussed, it is likely that the hearing was conducted in violation of Dr. Williams' fourteenth amendment rights, the Court will not rely on the Board of Medical Examiners' findings in considering the balance of harm. Thus, the Court considers that Dr. Williams has prevailed in demonstrating that the balancing of the harm weighs in favor of issuing a temporary restraining order.

D. The Public Interest

The public interest points strongly to the issuance of a temporary restraining order. The Fourteenth Amendment prohibits state interference with protected property interests without due process of law. It is the role of the Court to uphold the Fourteenth Amendment so that people will be secure in their fundamental rights.

V. Conclusion

Dr. Williams motion for a temporary restraining order is meritorious. Dr. Williams has demonstrated

that he will suffer irreparable harm if his physician's license is not properly restored. He has shown a strong likelihood of success on the merits. The balancing of harm tilts in favor of the issuance of a temporary restraining order as does the public interest. Accordingly, the Court will enjoin the Board of medical Examiners from enforcing its June 16, 2006 decision, revoking Dr. Williams' physician's license. However, today's ruling does not impede the Board of Medical Examiners from taking any future action against Dr. Williams after affording him reasonable notice and an opportunity to be heard.

ENTER:

DATE: March 10, 2006 /s/ Raymond L. Finch
Raymond L. Finch
Chief Judge

ATTEST
Wilfredo F. Morales

/s/ Theresa S. Thomas
Deputy Clerk

cc: Magistrate Judge George W. Cannon, Jr.
Joel H. Holt, Esq.
Melvin Evans, Jr., Esq.

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

WILBERT WILLIAMS, MD, Plaintiff, v. GOVERNMENT OF THE VIRGIN ISLANDS, BOARD OF MEDICAL EXAMINERS: COMMISSIONER OF HEALTH, DARLENE CARTY, THELMA R. WATSON, Defendants.	)	CIVIL NO. 2005/0097

ORDER

THIS MATTER comes before the Court on the Motion for a Temporary Restraining Order filed by Defendant Wilbert Williams, M.D. or Williams seeks the reinstatement of his medical license, which has been revoked by Defendant Government of the Virgin Islands Board of Medical Examiners.

For the reasons stated in the accompanying Memorandum Opinion, it is hereby

ORDERED that the Dr. Williams' Motion for a Temporary Restraining Order is

GRANTED;

that Defendant Board of Medical Examiners is **ENJOINED** from enforcing its Final Order revoking Dr. William's license to

practice medicine; and that pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, such Temporary Restraining Order will expire in 10 days, "unless within [10 days], for good cause shown, [the Temporary Restraining Order] is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period."

ENTER:

DATE: March 10, 2006 /s/ Raymond L. Finch
Raymond L. Finch
Chief Judge

ATTEST
Wilfredo F. Morales

/s/ Theresa S. Thomas
Deputy Clerk

cc: Magistrate Judge George W. Cannon, Jr.
Joel H. Holt, Esq.
Melvin Evans, Jr., Esq.

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

WILBERT WILLIAMS, MD Plaintiff, v. GOVERNMENT OF THE VIRGIN ISLANDS, BOARD OF MEDICAL EXAMINERS: COMMISSIONER OF HEALTH, DARLENE CARTY, THELMA R. WATSON, Defendants.	)	CIVIL NO. 2005/0097 ACTION FOR INJUNCTIVE AND DECLARATORY RELIEF

ORDER

This matter is before the Court on the plaintiff's motion to extend the temporary restraining order issued on March 10, 2006. Upon consideration of the matters before the Court and being otherwise advised of the premises, it is hereby

ORDERED

THAT pursuant to Rule 65(d), the motion is **GRANTED** and order issued on March 10, 2006 is hereby extended for an additional 10 day, until April 7, 2006. A hearing on the preliminary injunction is hereby set for March 30, 2006 at 11:00 A.M.

Dated: March 24, 2006 /s/ [Illegible]
JUDGE OF THE
DISTRICT COURT

ATTEST: WILFREDO MORALES
Clerk of Court

BY: /s/ Theresa S. Thomas
Deputy Clerk

dist: Joel H. Holt, Melvin H. Evans, Jr., Terrilyn Smock, Esq. [Nolan Paige, Esq., [Illegible]

IN THE DISTRICT COURT
OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

WILBERT WILLIAMS, JR. M.D., Plaintiff, v. GOVERNMENT OF THE VIRGIN ISLANDS, Defendant.	)	Civil No. 2005/97 March 30, 2006 1:50 p.m.

TRANSCRIPT OF STIPULATION
BEFORE THE HONORABLE CHIEF
JUDGE RAYMOND L. FINCH

APPEARANCES:

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34-38 KRONPRINDENS GADE
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BY: TERRILYN SMOCK, ESQ.,
VALERIE LAWRENCE, R.P.R.
3013 ESTATE GOLDEN ROCK
CHRISTIANSTED, ST. CROIX
U.S.V.I. 00820-4355

(THEREUPON, the following was heard in open court at 1:50 p.m.)

THE CLERK: Wilbert Williams, M.D. versus Government of the Virgin Islands, Civil No. 2005/0097.

MR. HOLT: Your Honor, I believe we've reached a stipulation.

MS. SMOCK: Terrilyn Smock for the Department of Justice.

THE COURT: Very well.

MR. HOLT: It's my understanding that the government wants to raise the issue of jurisdiction, and will have until May 15th of 2006 to file a brief; that the Plaintiff will then have twenty days within which to respond. And government will have ten days thereafter to reply to that.

And that in the interim time period, that that Court's TRO order will stay in place, and Dr. Williams will be allowed to practice medicine until further order of this court.

MS. SMOCK: That's correct.

THE COURT: Very well. I will grant the order, grant the motion, and incorporate it as an order.

MS. SMOCK: Thank you, Your Honor.

THE COURT: Very well. Thank you, counsels.

(Time noted 1:52 p.m.)

* * *

CERTIFICATE

I, VALERIE LAWRENCE, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter this 10th day of May, 2006.

/s/ Valerie Lawrence
Valerie Lawrence, RPR

CASE NO. 2008-4795

UNITED STATES COURT OF APPEALS
IN THE THIRD CIRCUIT

DR. WILBERT WILLIAMS,

APPELLANT

v.

GOVERNMENT OF THE VIRGIN ISLANDS,
MEDICAL BOARD OF EXAMINERS,

APPELLEE

On Appeal from the District Court
of the Virgin Islands,
Division of St. Croix, No. 2005-CV-097

BRIEF OF THE APPELLANT

AND

VOLUME ONE OF THE JOINT APPENDIX

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STATEMENT OF JURISDICTION

Jurisdiction was invoked in the district court pursuant to 28 U.S.C. §1331, 28 U.S.C. §2201, 42 U.S.C. §1983, 15 U.S.C. §1, and 42 U.S.C. §11112. (JA777) This Court has jurisdiction in this appeal pursuant to 28 U.S.C. §1291 and §1294(3).

STATEMENT OF ISSUES

Did the district court err in dismissing this case by finding that Younger applied and that none of the Younger exceptions applied.

STATEMENT OF RELATED CASES AND PROCEEDINGS

There is a pending Writ of Review in the Superior Court of the Virgin Islands, appealing the decision of the Virgin Islands Medical Board ("Board") pursuant to 5 V.I.C. §1421, filed after the district court dismissed this case. A request for immediate injunctive relief while the matter is being heard is also pending in that same case. The Superior Court has not yet decided whether it has jurisdiction, as a motion to dismiss for allegedly filing out of time (more than 30 days after the decision being challenged was issued)

is pending, so the request for injunctive relief has not been addressed either.

Additionally, when the Board revoked Dr. Williams' license, it resulted in an administrative hearing being commenced in 2006 before the DEA regarding whether Dr. Williams' license to prescribe and use certain drugs should be revoked, which is still pending, although a hearing was held. Indeed, portions of that transcript were filed as a pre-hearing exhibit in this case. JA953

STATEMENT OF THE CASE

On May 31, 2005, Dr. Williams received a notice of hearing for June 9, 2005, from the Virgin Islands Medical Board ("Board"), involving his treatment of a patient, Lydia Ventura ("Ventura"). JA353 After the hearing, the Board suspended Dr. Williams' license on June 17, 2005, for one year. JA353-57 Dr. Williams promptly filed a complaint in the district court (JA737) and sought a temporary restraining order ("TRO") to enjoin the Board from enforcing its order. JA 753 The district court entered the relief sought on July 12, 2005, quoting from *In Re Tutu Wells Contamination Litigation*, 120 F.3d 368, 379 (3rd Cir. 1997) in part as follows (JA48-49):

> The party against whom sanctions are being considered is entitled to notice of the legal rule on which the sanctions would be based, the reasons for the sanctions, and the form of the potential sanctions. Without such notice,

> the opportunity to be heard would be meaningless; only with this information can a party respond to the court's concerns in an intelligent manner. In other words, a party cannot adequately defend himself against the imposition of sanctions, unless he or she is aware of the issues that must be addressed to avoid the sanctions.

The court then went on to find as follows (JA49):

> Dr. Williams was not notified of the legal rule permitting the Board of Medical Examiners to sanction him, of the reasons for the sanctions or the form of the potential sanctions. Therefore, Dr. Williams was denied the opportunity to respond to the Board's concerns in an intelligent manner so as to address the issues necessary to avoid the sanctions.

The court concluded that the Board's proceedings had violated Dr. Williams' due process rights. JA42-51 The Board decided not to challenge this finding and agreed to the entry of a permanent injunction. JA52 The Board scheduled a new hearing and notified Dr. Williams.[1] JA368

The new hearing took place on September 12, 2005. JA383 On January 26, 2006, the Board rendered its decision, this time revoking Dr. Williams'

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[1] The district court case was not dismissed, however, because the complaint had also sought damages. JA54

license rather than just suspending it for one year. JA676

After receiving the Board's decision on March 7th, Dr. Williams sought a new TRO from the district court. The court found that the Board's proceedings again violated Dr. Williams' due process rights despite the court's previous instructions and granted the TRO. JA55 Rather than proceed with a preliminary injunction hearing, the Board requested leave to brief certain jurisdictional issues, but it agreed to the TRO remaining in effect until further order of the Court. JA65-68 As noted by the district court, this stipulation made the TRO a preliminary injunction. JA7 A scheduling order was then set. JA68

The Board filed a motion to dismiss on June 6, 2006, raising the *Younger* issue for the first time one year after this suit was filed. JA69 The district court subsequently denied the motion as to the anti-trust claim, but found that the *Younger* criteria applied to other claims. JA90-100. However, the court decided it needed to hear further testimony on whether the exceptions to *Younger* applied, so it set a hearing on these *Younger* exceptions. JA90-100 After several continuances (JA102,104), the hearing was finally held on June 14, 2007. JA105 After hearing some testimony, the judge assigned to the case, the Honorable Judge Raymond L. Finch, recused himself. JA139 The case was reassigned to Judge Gomez who issued multiple scheduling orders over the next year. JA140-148

During this time period, Dr. Williams moved to hold the Board in contempt for not giving him his annual renewal license while these proceedings were pending, thus violating the TRO.[2] JA869 In response, the Board moved to terminate the TRO. JA892 Dr. Williams responded by requesting another preliminary injunction hearing if the current stipulation was allowed to be withdrawn. JA908 Likewise, the Board moved for summary judgment on the anti-trust claim (JA1040), which Dr. Williams opposed, pointing out that there were genuine issues of fact in dispute. JA1058 These motions were never addressed by the court, even though Dr. Williams repeatedly renewed his request that the Board be held in contempt for not issuing him a renewal license, even agreeing to have such a hearing in St. Thomas to accommodate Judge Gomez' busy schedule. JA1085,1095

Finally, forty months after the case was filed and over two years after the motion to dismiss was filed, the district court held a hearing on November 17, 2008, regarding the *Younger* issues. JA150 On December 8, 2008, the district court dismissed the case under the *Younger* abstention doctrine. JA3 The court did not address any of the other pending motions which it found were allegedly moot. JA4 This appeal ensued. JA1 A motion to stay was denied by the district court and this Court.

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[2] Medical licenses are renewed annually upon payment of a fee and certain forms. 27 V.I.C. §50f

STATEMENT OF THE FACTS

Dr. Williams moved to St. Croix in 1981 from New York where he was licensed to practice medicine. JA297 He subsequently was licensed in 1983 to practice medicine in the Virgin Islands and opened his practice specializing in family medicine on St. Croix, which he described in detail at the hearing. JA297-300. During the 25 years he practiced medicine on St. Croix, Dr. Williams never had any complaints or other problems filed with the Board until this incident. JA211,298

On April 15, 2005, Dr. Williams was asked to treat Ventura who came into his office in extreme pain. JA402-419[3] He decided to give her morphine, which he testified was an acceptable form of treatment for her symptoms based on the Physician's Desk Reference. JA428-429 While in his office, the patient became unresponsive prompting Dr. Williams to call the hospital for an ambulance. JA446 The ambulance arrived shortly thereafter with two EMTs and two paramedics. JA450-451 Ventura was taken to the hospital, where she died 7 days later. The autopsy showed multiple medical problems, but concluded that the cause of death was morphine intoxication based upon a blood test that indicated she had supposedly been given excess morphine. JA614-616

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[3] The September 12, 2005, hearing transcript was introduced as Exhibit 11 at the November 17, 2008, district court hearing. JA383

The Board subsequently received an anonymous letter complaining about Dr. Williams' treatment. JA212,718 According to the testimony of the Board members, Dr. Williams' hearing was the first one the Board ever conducted regarding any doctor in the Virgin Islands for any reason (JA195-196, 235-236, 295-296), as confirmed by public statistics. JA175 The Board Chairman, Dr. Thelma Watson, testified that if this anonymous letter had not been sent, no hearing would have been held. JA237

After the May 31, 2005 hearing, the Board suspended Dr. Williams' license for one year on June 17, 2005, finding that his testimony was hesitant and inconsistent regarding his use of morphine, noting that he had improperly destroyed the remaining morphine after Ventura left his office and concluding that his treatment of Venture was substandard. JA354,357 However, the district court enjoined the Board from enforcing its decision due to its failure to provide Dr. Williams adequate notice of the nature of the hearing, thus violating his due process rights. JA44 Rather than challenge this order, the Board stipulated to a permanent injunction (JA52) and sent out a new notice of hearing. JA368

After receiving this new notice, Dr. Williams' counsel, who had not represented him during the first hearing, immediately wrote the Board regarding multiple issues. JA370-371 In particular, counsel urged the Board to adopt rules and regulations to govern the hearing, to make certain evidence available, including blood samples of Ventura (so another blood

test could be done) and to assign new Board members to hear this case. These requests were repeated on several occasions over the next six weeks with no response.[4] JA374-382

In addition to asking for an entire new Board, Dr. Williams specifically objected to one Board member, Dr. Michelle Dizon, sitting on the panel as she was in direct competition with him.[5] JA162-165, 370-382 As Dr. Williams testified, Dr. Dizon directly competes with him, as the bulk of his practice involves treating many of the same types of patients she treats. JA299-302 While Dr. Dizon never refuted this fact,[6] the Board tried to justify its assertion that there was no conflict as Dr. Dizon is an endocrinologist, not a family practitioner. JA205 Notwithstanding this alleged distinction, Dr. Watson acknowledged that the treatment of diabetes was a significant part of the type of practice that Dr. Dizon is engaged in. JA205 However, Dr. Williams' practice consists of about 80%

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[4] Adopting such procedures is not difficult, as Congress has already established these basic rules, which gives the Board certain additional immunities if followed. *See* 42 U S.C §11112.

[5] During the Board's second hearing, it was also pointed out that Dr. Dizon was listed on the notice of death as the last doctor to treat Ventura, although she claimed she did not actually treat the patient. JA 461

[6] Dr. Dizon never made any affirmative statement that she did not compete with Dr. Williams at either the disciplinary hearing or in the district court, nor did she even testify or file any affidavits to refute these facts, although the disciplinary hearing transcript shows she was actively involved in questioning witnesses, particularly Dr. Williams. JA383-675.

diabetes patients (JA300) so clearly Dr. Dizon is in direct competition with him. Of course, the Board did not even bother to inquire of Dr. Williams as to what his practice entailed (JA206, 268) so it never even explored this conflict. Indeed, the Board could not explain whether it really even gave consideration to this potential conflict or, if so, how it evaluated this potential conflict. JA205-207,268-269

At the outset of the hearing, Dr. Williams counsel specifically asked the Board what the charges were and what evidence it intended to consider as follows (JA399,400) (emphasis added):

> Mr. Holt: What are the documents you intend to rely upon?
>
> Ms. Smock: The official records that Dr. Landron is responsible for as head of the medical examiners, which is the autopsy report.
>
> Mr. Holt: That's it?
>
> Ms. Smock: That's it.
>
> Mr. Holt: Because I'm told you guys have gone back and looked at his grievances and lawsuits against him; *you've been talking to the pharmacists. All of those things you've been doing, so it's not really a clean slate.*
>
> Ms. Smock: No. No. This Board has a right to investigate to any extent possible any situation, and that would be part of an investigation is to look at everything.

> Mr. Holt: *If that's part of the charge against him, you should have listed that in the charges.*
>
> Ms. Smock: *It's not part of the charges against him.*
>
> Mr. Holt: *And I should be given copies of it so that I could respond to it.*
>
> Dr. Odlum: *It's not part of the charges.*
>
> Ms. Smock: *The charges are before you. What the doctor is charged with exclusively we have before you, nothing else, nothing more.*

As such, the hearing began with Dr. Williams testifying first.

During the hearing, Dr. Williams presented evidence to explain how he believed the patient died, pointing out the symptoms and medical information from the doctor who had seen Ventura earlier in the day as well as from the hospital (which he had not previously been able to obtain), which he believed supported a diagnosis of dengue hemorrhagic fever. JA651-659 Dr. Williams also called the Medical Director, Dr. Griffith, of the hospital to review the medical records of Ventura. Dr. Griffith agreed that these records warranted consideration of dengue fever as the cause of death. JA467-488

The two EMTs and two paramedics who arrived at Dr. Williams' office on the night in question also testified, three of whom were called by Dr. Williams.

JA521,537,545,598 The Government then called a pathologist, Dr. Landron, to testify about the autopsy results.[7] JA614 He testified that the cause of death based on the blood tests results as referenced in the autopsy was morphine intoxication. JA616 It should be noted that multiple requests by Dr. Williams for blood samples to do a second test were ignored (JA370-382), which Dr. Landron said would change the autopsy results if excess morphine was not found in the blood. JA627 He also acknowledged that the results of the one blood test done could be wrong, agreeing that it is best to do a second test to make sure the first test was reliable. JA626 Finally, he testified that there was no documented chain of custody for this one blood test between the time it was taken and 10 days later when it was sent to the testing lab. JA624

In evaluating Dr. Williams' conduct, the Board did not call any expert to establish a standard of care required of Dr. Williams in treating Ventura, nor did it rely on any medical standard in evaluating his treatment, as the Board conceded at the *Younger* hearing. JA192, 195, 270-271, 286-288 Indeed, the Board members acknowledged that they acted as their own investigator, prosecutor, expert witness and

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[7] The pathologist who testified, Dr. Landron, was not the doctor who did the autopsy. He was called without any notice to Dr. Williams. JA396 The autopsy was done by Dr. Dupree who did not testify and who is no longer allowed to practice in the Virgin Islands. JA201-202

judge. JA193,194 They likewise acknowledged that the Board had no procedural rules regarding such hearings, nor did the Board have an evidentiary standard to apply to the evidence (such as a preponderance of the evidence, or clear and convincing evidence).[8] JA193-195, 269-271

Moreover, notwithstanding the statement by the Board and its counsel that the only evidence the Board would consider was previously disclosed evidence related to the stated charges against Dr. Williams, the Board subsequently subpoenaed and reviewed information from third parties received after the hearing which it never informed Dr. Williams of, nor did it share it with him or provide him with an opportunity to respond to it. JA173-181,690-694

Thus, even though the Board expressly stated at the outset of the hearing that no other materials would be considered, the Board ignored its own representations (and due process requirement) and in fact subsequently did consider other materials which were then specifically discussed at length to support the Board's findings and penalty. JA729-731

On January 26, 2007, the Board issued a decision (JA719) which drastically increased the penalty from the first hearing, revoking Dr. Williams license based on the same treatment which the Board had

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[8] As the record reflects, counsel for Dr. Williams repeatedly requested the Board to establish such rules, both before and after and at the actual hearing. JA370-399

previously found only warranted a one year suspension. JA731-32

Moreover, the decision contained findings that were undisputedly erroneous. For example, the Board found that Dr. Williams' allegedly lied by saying he was currently ACLS certified. JA730-731 In fact, Dr. Williams testified truthfully that he was *not* ACLS certified at the time of the hearing, stating that his last ACLS certification was in 2002, which expired in 2004, as follows (JA410) (emphasis added):

> Q. What's the expiration date on it?
>
> A. I think that was in 2003-2.
>
> Q. 2002. So it's a two year certification.
>
> A. I think they certify you for two years.
>
> Q. American Heart Association Advance Cardiac Life Support is a two year certification. **So this expired in 2004; correct? Do you have any re-certification since 2004?**
>
> **A. No.**

Thus, Dr. Williams did not testify that he had a current ACLS certification (as the Board asserted), as he testified that he had not been re-certified since 2004. At the initial *Younger* hearing, Dr. Watson admitted the Board made a false findings, testifying as follows (JA132):

> Q. Do you see where he's asked the question, "American Heart Association Advance Cardiac Life Support is a two-year certification. So this expired in 2004, correct?" And in the question, "Do you have any recertification since 2004?"
>
> Answer: "No." Do you see that?
>
> A. I see that.
>
> Q. So he told you under oath that he currently did not have a certification, didn't he?
>
> A. Yes. Yes.
>
> Q. And yet, notwithstanding the fact that that's what the record said, one of the findings that you had against him is he lied to you about that when he said he was certified, didn't he?
>
> A. Yes, I guess.

She then acknowledged that no one had pointed this error out to her before. JA133 At the second hearing, Dr. Watson again acknowledged that the transcript contained a truthful answer, but this time she tried to explain the Board's findings that the answer was not truthful, allegedly relying on an earlier question. JA168-170 That question, however, did not result in a false statement either, as revealed by the transcript. (JA408):

> Q. Do you have any kind of certification in advance cardiac life support, basic life support, pediatric advance life support?

A. Yes, I do.

This general question was then followed by the more specific questioning where Dr. Williams expressly stated he was not ACLS certified after 2004. JA410 Despite the clarity of the question, a second Board member, Dr. Odlum, also refused to acknowledge the Board's obvious erroneous finding, stating under oath as follows (JA263):

> Q. Do you think the Board made a mistake when Dr. Williams stated that he is currently ACLS certified during his testimony?
>
> A. No.
>
> Q. Despite his testimony, you think he did state that he was currently ACLS certified?
>
> A. Yes.

The refusal of the Board members to acknowledge this erroneous finding raises serious questions about their credibility and motivation.

Similarly, the Board found that Dr. Williams did not have an active valid license at the time he provided the treatment in question on April 15, 2005. JA730-731 When asked whether this issue had been one of the charges against Dr. Williams, Dr. Watson admitted it was not part of the charges against him (JA188); nor was he given a chance to respond to them. JA125

More importantly, Dr. Williams *had a valid license issued to* him effective April 1, 2005 (15 days

before he treated Ventura), that was signed by Dr. Odlum (JA695, who admitted as follows (JA263-269):

> Q. Okay. Now, if you could look in front of you and try to find Exhibit No. 16, it is a Xerox copy of the license that Dr. Williams had, a one-page document. Okay. Now, is this your signature – first of all, what is the card?.
>
> A. This is the license card that's issued.
>
> Q. Okay. And what is the date that it says the license is effective from?
>
> A. April 1st, 2005 to 9/30, 2005.
>
> Q. And you signed there?
>
> A. Yes.
>
> Q. If I asked you if Dr. Williams had a license on April 1 of 2005, in light of this card issued by the Board and signed by you, would you say he did or did not ?.
>
> A. If I knew nothing else, yes. If I was an outside standing person and I saw this license, then I would assume so.
>
> Q. You signed this. Did you look to make sure the paperwork was in order before you signed it?
>
> A. Yes, I did.
>
> Q. Did you find anything wrong with the paperwork before you signed it?

> A. Other than the fact that it was extremely late, 6-1/2 months late.
>
> Q. Other than that, you still signed this, didn't you?
>
> A. Yes.
>
> Q. And you said right on here, effective April 1st, didn't you?
>
> A. That was the practice, at the time.

Despite this fact, both Dr. Watson and Dr. Odlum tried to justify the Board's finding that Dr. Williams did not have a license when he treated Ventura by explaining that the Board (without notice to Dr. Williams) decided to look at Dr. Williams' renewal application *after* the hearing and found it was only pending when the treatment in question was rendered, so the Board then found that the actual license issued retroactive to April 1 *by the Board* was somehow now invalid! JA184-186

Both Dr. Watson and Dr. Odlum admitted at the hearing that the Board just adopted this new standard for Dr. Williams, as it has routinely allowed all doctors to continue practicing medicine while their annual renewal paperwork is being processed. JA186-187, 264-266. As Dr. Watson candidly admitted (JA187):

> Q. And Dr. Williams certainly isn't the only doctor that didn't get his papers in on time, is he?
>
> A. I guess not.

> Q. And can you tell me whether or not doctors continue to practice medicine in this jurisdiction even though they did not get their papers in on September 30th, on a regular basis?
>
> A. I wouldn't say on a regular basis, but there are physicians that practice without having current licenses.

Dr. Odlum also admitted as follows (JA266):

> Q. You discipline any – have you ever disciplined any doctor for continuing to practice without that license because his paperwork was late?
>
> A. Not because the paperwork was late, but for not having a license, yes..
>
> Q. But in a situation where the doctor's didn't get is paperwork in on time, so he didn't have a license for that reason, have you ever disciplined a doctor?
>
> A. Not that I recall.

Thus, Dr. Williams is the only doctor in the entire Virgin Islands to be punished because of a licensing requirement that *did not apply to any other doctor at the time of the 2005 hearing*, but which standard was created after his hearing without notice to him to justify revoking his license.

Based on the foregoing facts, the district court again found the Board had violated Dr. Williams' due process rights in the second hearing and enjoined the

Board from enforcing its decision. Rather than challenge this finding, or hold another hearing, the Board resorted to procedural tactics to get around these unchallenged findings of wrongdoing, filing a motion to dismiss, *inter alia*, based upon the *Younger* doctrine.

During the *Younger* hearing, the Board attempted to explain its decision in two ways. First, as to its findings that it could not justify, the Board members simply testified repeatedly that these findings were supposedly not "critical" to its decision to revoke Dr. Williams' license (JA189,192,219-221,231,249,272-273,281), even though the findings were specifically listed on its "Final Findings" and were again specifically mentioned in the penalty section of the decision without being classified as "non-critical". JA729-731 These "non-critical" findings included the erroneous charge of lying, the newly created standard that said he was in fact not licensed at the time of his treatment of the patient and the findings based on the materials obtained by the Board after the hearing.

Second, the Broad then stated that its decision to drastically increase the penalty by revoking Dr. Williams' license rather than suspend it for one year was based on (1) the substandard treatment allegedly rendered by Dr. Williams, which the Board admitted was the basis for its initial one year suspension (JA214) and (2) his failure to acknowledge any wrongdoing as evidenced by his putting on a defense at the second hearing, which these Board members

now claim were the Board's only "critical" findings. JA250,276-277,279,281,290-291. Of course, the Board did not even know or consider how long Dr. Williams had been practicing medicine or whether he had ever had any other problems in reaching its decision to revoke his license. JA251

One final fact needs to be discussed. Dr. Williams' wife was called to explain that she had submitted the required paperwork to renew Dr. Williams' license annually in 2006, 2007 and 2008. JA304-306 She also explained why the failure to issue the renewal license directly affected the office's ability to obtain supplies and process insurance and Medicare claims for remittance along with other matters. JA304-308

When the Board members were asked about their failure to issue a renewal license to Dr. Williams', they acknowledged they were aware of the problems it would cause him, but stated they did so since they were only enjoined from revoking his license and were not required to renew it. JA199-200 As previously noted, the court never addressed the multiple requests to hold the Board in contempt for violating the terms of the preliminary injunction (JA864,1085,1095) even though the Board admitted it had no basis for not processing this paperwork because "its still a pending matter before this Court." JA199

STANDARD OF REVIEW

This Court exercises plenary review over the legal determinations as to whether the requirements for abstention have been met and thereafter reviews a district court's decision to abstain under *Younger* for abuse of discretion. *Zahl v. Harper*, 282 F.3d 204, 208 (3rd Cir. 2002); *O'Neill v. City of Philadelphia*, 32 F.3d 785, 789 (3rd Cir. 1994)

ARGUMENT

I. The district court erred in holding that this case should be dismissed under the *Younger* doctrine.

Dr. Williams respectfully submits that the district court erred in dismissing this case for two separate and independent reasons, each of which will be discussed separately for the sake of clarity.

A. The Board waived its right to assert any *Younger* abstention

The district court had jurisdiction over this case, but declined to exercise its jurisdiction based upon the abstention doctrine set forth in *Younger v. Harris*, 401 U.S. 37 (1971) as extended to state administrative proceedings in *Middlesex County Ethics Comm. V. Garden State Bar Ass'n*, 457 U.S. 423 (1982). While there are many judicial descriptions of the abstention doctrine, this Court's opinion in *Hi Tech Trans, LLC v. New Jersey*, 382 F.2d 295, 303 (3rd Cir. 2004)

succinctly describes the judicial policy creating abstention doctrines as follows (citations omitted):

> Abstention is a judicially created doctrine under which a federal court will decline to exercise its jurisdiction so that a state court or agency will have the opportunity to decide the matters at issue. The doctrine is rooted in concerns for the maintenance of the federal system and "represents an extraordinary and narrow exception to the 'virtually unflagging obligation of the federal courts to exercise the jurisdiction given them.'" Consequently, abstention is justified "only in the exceptional circumstances where the order to the parties to repair to the State court would clearly serve an important countervailing interest." in other words, '[a]bstention from the exercise of federal jurisdiction is appropriate only under certain limited circumstances. *Id.* at 303.(citations omitted).

In *Hi Tech*, this Court then went on to further explain the *Younger* abstention doctrine *id.* at 304 (citations omitted):

> *Younger* abstention is similar in that it "espouse[s] a strong federal policy against federal court interference with pending state judicial proceedings absent extraordinary circumstances." "The policies underlying *Younger* abstention have been frequently reiterated" by the Court. "The notion of comity includes a proper respect for state functions, a recognition of the fact that the

> entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate way" as long as they can do so without contravening the supremacy of federal law. "Minimal respect for the state processes, of course, precludes any *presumption* that the state courts will not safeguard constitutional rights."

In short, abstention allows a district court to dismiss a case in which it otherwise has jurisdiction for policy reasons as opposed to traditional jurisdictional challenges. However, as noted in *Chiropractic American v. Lavecchia*, 180 F. 3d 99, 103 (3rd Cir. 1999):

> Abstention from the exercise of jurisdiction, however, is the exception rather than the rule.

Moreover, a *Younger* challenge to jurisdiction can be the subject of wavier as explained by the Supreme Court in *Ohio Bureau of Employment Services v. Hodory*, 431 U.S. 471, 480 (1977) (citations omitted):

> A State may of course voluntarily submit to federal jurisdiction even though it might have had a tenable claim for abstention.

With these general rules in mind, it is respectfully submitted that the Board waived its right to raise the *Younger* abstention doctrine in this case.

In this regard, the district court entered its initial TRO just after the complaint was filed in June of 2005. JA42 The Board decided not to contest the TRO findings, agreeing to a permanent injunction. JA52 Why? Because clearly the Board believed it could just follow the district court's instructions, hold a second hearing and be done with Dr. Williams as a doctor in this jurisdiction.

After the district court entered a second TRO subsequent to the second hearing, the Board reversed tactics and belatedly decided to challenge the district court's jurisdiction under the *Younger* doctrine. Indeed, it did not even raise the *Younger* issues until June 6, 2006, almost one year after this suit was filed and after two injunctions had been entered and agreed to. Indeed, *Younger* is designed to avoid such injunctive relief when appropriate, yet the Board agreed *twice* to such federal intervention before raising *Younger*. JA69

Moreover, the Board's delay in raising this issue clearly prejudiced Dr. Williams as the Board did not raise this issue until June 6, 2006, which was over 30 days after he received the Board's January 26th decision.[9] Thus, at this point Dr. Williams had to

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[9] Rule 15 of the Superior Court requires Writs of Review to be filed within 30 days of the Board's decisions. This time period has been held to start when the aggrieved party receives notice. *See, Tip Top Construction v. Government of the Virgin Islands*, 41 V.I. 72 (Sup.Ct. 1999). Dr. Williams received the Board's January 26, 2006 decision on March 7, 2006.

proceed with his chosen path – litigation in the district court – as it was unknown whether the Superior Court of the Virgin Islands would hear his request for a Writ of Review as being timely.[10] Indeed, if the district court did not have jurisdiction, then its first TRO which became a permanent injunction is also unenforceable, so that the time to file a Writ of Review to the initial one year suspension expired long ago.

Admittedly the cases cited by the Supreme Court in *Ohio Bureau*, *supra* at 480, involved situations where the state defendants had not raised *Younger*, urging the courts to rule on the constitutionality of the issues before them. However, since abstention doctrines are narrow exceptions to jurisdiction, waiver of the *Younger* doctrine based on the facts of this case is warranted. *See, e.g. Herz v. Degnan*, 648 F.2d 201, 210 (3rd Cir. 1981) (*Younger* issues raised after substantial litigation had taken place in the district court should not deprive a plaintiff of his or her chosen forum).

By agreeing to the initial permanent injunction in July of 2005, the Board chose its path, accepting the district court's determination and acquiescing to its disposition of this case, a position it should not be permitted to withdraw from just because it did not like the court's ruling in the second TRO.

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[10] This dilemma is currently being faced now by Dr. Williams as noted in the Statement of Related Proceedings

The Board thus waived its *Younger* abstention claim and should not be allowed to change its mind just because it subsequently decided it did not like the district court's second TRO, which it likewise agreed to while belatedly raising the *Younger* abstention argument. As such, the district court erred in dismissing this case under the *Younger* doctrine as the Board waived this objection by its conduct in this litigation.

B. Even if Younger was not waived, its exceptions applied here.

Even if the Board timely raised the *Younger* issue, that doctrine does not warrant dismissal due to the exceptions to *Younger* recognized in *Middlesex County Ethics Comm., supra* at 435, which held as follows:

> The importance of the state interest in the pending state judicial proceedings and in the federal case calls *Younger* abstention into play. So long as the constitutional claims of respondents can be determined in the state proceedings and so long as there is no showing of bad faith, harassment, or some other extraordinary circumstance that would make abstention inappropriate, the federal courts should abstain.

The Third Circuit in *Anthony v. Council*, 316 F.3d 412, 418 (3rd Cir. 2002) noted these exceptions as follows:

> . . . *Younger* abstention is not appropriate if the federal plaintiff can establish that (1) the state proceedings are being undertaken in bad faith or for purposes of harassment or (2) some other extraordinary circumstances exist . . . such that deference to the state proceeding will present a significant and immediate potential for irreparable harm to the federal interests asserted.

As noted in *Kugler v.* Helfant, 421 U.S. 117, 124 (1975),

> Only if 'extraordinary circumstances' render the state court incapable of fairly and fully adjudicating the federal issues before it, can there by any relaxation of the deference to be accorded to the state criminal process. The very nature of 'extraordinary circumstances,' of course, makes it impossible to anticipate and define every situation that might create a sufficient threat of such great, immediate, and irreparable injury as to warrant intervention in state criminal proceedings. But whatever else is required, such circumstances must be 'extraordinary' in the sense of creating an extraordinarily pressing need for immediate federal equitable relief, not merely in the sense of presenting a highly unusual factual situation.

Of course, what could be a more immediate need for federal equitable relief than for a district court to protect a plaintiff's due process rights *after* the court had already instructed the Board on what due process was needed and then allowed the Board to hold a

second hearing? At some point, the district court's integrity in protecting its own orders must rise to the level of "exceptional circumstance"!

In this case, in deciding whether such exceptional circumstance exist, the focus is directed to the actions of the Board in conducting the second hearing. The question is whether the Board was incompetent by reason of its bias against Dr. Williams in rendering its January 26, 2006 decision. As will be set forth herein, it is respectfully submitted that the evidence in this case overwhelmingly proves a very difficult point to prove – that the Board's bias towards Dr. Williams was so great during the second proceeding that the *Younger* exceptions apply to this case, as the Board clearly retaliated against him for protecting his due process rights in seeking the initial TRO.

Indeed, the district court expended a great deal of time explaining why the *Younger* doctrine was applicable before getting to Dr. Williams' arguments regarding the *Younger* exceptions. This effort caused the district court to confuse some of Dr. Williams' arguments. For example, the district court found that the Virgin Islands judicial system provided an adequate opportunity to raise the constitutional issues in question, when the focus of Dr. Williams' arguments regarding the Board's procedures were made to show the Board's bias. In this regard, as noted in *Gibson v. Berryville*, 411 U.S. 564, 577 (1973):

> Here the predicate for a *Younger v. Harris* dismissal was lacking, for the appellees

> alleged, and the District Court concluded, that the State Board of Optometry was incompetent by reason of bias to adjudicate the issues pending before it. If the District court's conclusion was correct in this regard, it was also correct that it need not defer to the Board. Nor, in these circumstances, would a different result be required simply because judicial review, *de novo* or otherwise, would be forthcoming at the conclusion of the administrative proceedings.

Thus, an adequate judicial appeals process is irrelevant to the Younger exceptions where such bias can be shown.

Like the board in *Gibson*, the Board here acted as its own investigator, prosecutor and judge. Indeed, in this case, the Board acted as its own expert as well, which further demonstrates its bias as will be discussed herein. Moreover, rather than relying on broad generalizations of alleged bias, Dr. Williams brought forth multiple specific facts that established actual bias in this case as follows:

1. The Board failed to demonstrate that it even considered whether one of its Board members, Dr. Dizon, had a conflict of interest because her practice directly competed with Dr. Williams' practice, as it did not even inquire into this matter once this alleged conflict was raised.

2. The Board relied upon evidence received after the hearing even though it represented

to Dr. Williams at the outset of the hearing that it would only consider the autopsy report and nothing else, thus making a direct misrepresentation to him.

3. The Board found Dr. Williams lied regarding his ACLS certification when the transcript clearly demonstrates otherwise. The fact that the Board refused to acknowledge this error when questioned about it under oath can only be explained by its subjective belief that it (and not the evidence) determines what is deemed to be the truth.

4. The Board, without notice, retroactively applied a new standard to Dr. Williams regarding the paperwork for his annual license renewal which was not applied to any other doctor in the Virgin Islands, even though the Board knew there were other doctors who were practicing medicine even though their paperwork had not been submitted.

5. Most importantly, the Board drastically increased the penalty after the second hearing by changing his punishment from a one year suspension to a revocation of his license for life.

6. Finally, notwithstanding the fact that the Board agreed not to enforce its order when it stipulated to the TRO becoming a preliminary injunction, the Board further demonstrated its bias by ignoring the injunction by its refusal to renew Dr. Williams' license for 2006, 2007 and 2008, even though he provided them the paperwork necessary to issue

> him a renewal license. The Board acknowledged that it knew its actions would cause Dr. Williams certain hardships in its practice (JA136-137), which Dr. Williams' wife pointed out had in fact occurred. JA304-308

While actual bias may be hard to establish, the facts in this case overwhelmingly establish such bias so that it was clearly erroneous for the district court to find otherwise. Indeed, the hearing testimony highlighted this bias even further.

For example, the Board dismissed the findings it could not justify under any due process standard as not being "critical" findings even though no such distinction was contained in their findings. They then stated that the two critical findings that justified *its dramatically increased penalty* were (1) Dr. Williams' substandard care and (2) Dr. Williams' lack of remorse as evidenced by the defense he put on at the hearing regarding dengue fever.[11]

However, the initial one year suspension was given because of his substandard care (JA353-57), as conceded by Dr. Watson at the second hearing. JA214 Moreover, Dr. Williams put on a defense at the first hearing as well, allegedly blaming the EMTs, as also noted by Dr. Watson. JA222 Indeed, the Board's

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[11] Indeed, Dr. Odlum's criticism of Dr. Williams' defense regarding dengue fever, which he believed supported the drastically increased penalty, is not credible since Dr. Odlum admitted he knew nothing about the diagnosis of dengue fever (JA285), although he did know it could cause death. JA285

initial order discussed all of the items relied upon at the *Younger* hearing for imposing a drastically increased punishment, including Dr. Williams alleged evasive answers regarding his use and handling of morphine. JA353-57 Thus, the reasons given for the increased penalty which is not explained in the January 26, 2006 decision and is not supported by any objective explanation leaves only one conclusion – the Board was biased towards Dr. Williams during the second hearing for challenging their authority in the first place.

While this Court need not attempt to understand these medical issues, the ability of the Board to just say "this is our finding" without demonstrating any evidentiary basis to support that finding demonstrates the Boards' bias in this case. For example, the Board criticized Dr. Williams for using morphine under the circumstances (JA232) and for not having a "reagent" present when he did so.[12] JA214,222 However, the Board did not have any opinions from an expert to contradict Dr. Williams' testimony that prescribing morphine under the circumstances was acceptable, nor did it point to any requirement that Dr. Williams should have had a "reagent" when using morphine. Likewise, the Board could not cite any DEA

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[12] Dr. Williams testified that he relied upon the Physician's Desk Reference in administering morphine to Ventura based on her symptoms. JA428-429 The Physician's Desk Reference is a practical tool used by all doctors, which Dr. Odlum admitted he was unfamiliar with JA282

regulation or other standard to support its "*ipse dixit*" determination that such treatment was substandard. JA181,269-271,283-284,288

Indeed, as Judge Finch noted in his first TRO opinion (JA49):

> **Defendants claim that the public will be harmed if Dr. Williams is allowed to continue to practice medicine at present.** Dr. Williams responded that he has successfully practiced medicine in St. Croix for over 25 years and has taken training suggested by the Board. The Board does not refute Dr. Williams' argument except to refer the Court to the findings issued after the hearing conducted without adequate notice to Dr. Williams. **Because, as discussed, it is likely that the hearing was conducted in violation of Dr. Williams' fourteenth amendment rights, the Court will not rely on the Board's findings in considering the balance of the harm.**

He made a similar finding in granting the second TRO. JA61-62

The point of this analysis is not to try to exonerate Dr. Williams in this appeal. The point is made to demonstrate the evidence which supports a finding of the Board's bias in conducting the second hearing held after Judge Finch's first TRO order. A review of Judge Gomez's analysis of the facts submitted by Dr. Williams in support of his contention that the *Younger*

exceptions applied in this case demonstrates why his findings constitute an abuse of discretion.

First, regarding Dr. Dizon's participation in the disciplinary hearing, the court found that Dr. Williams failed to produce persuasive evidence that Dr. Dizon was in competition with him, stating in part as follows (JA27n.11):

> Williams is a family medicine practitioner while Dizon is an endocrinologist. Williams testified that endocrinology constitutes approximately eighty percent of his business. Williams included his treatment of diabetes in arriving at that figure. Neither Williams nor the Defendants called Dizon as a witness. Significantly, Williams' testimony on this point does not establish the sort of direct pecuniary interest that *Gibson* requires.

Since it is undisputed that 80% of Dr. Williams' practice is identical to Dr. Dizon's practice, it is difficult to understand why the court could make such a finding. The court apparently felt that since Dr. Williams included diabetes as part of the 80% "endocrinology" figure that he practices, that this 80% figure could not be compared to Dr. Dizon's practice presumably because she does not treat diabetes patients. However, there is no evidence to support this assumption. Moreover, Dr. Watson testified that the treatment of diabetes is a significant part of endocrinology. JA205 Thus, this factual finding is clearly erroneous.

Moreover, while the court did correctly distinguish the pecuniary interest of Dr. Dizon, a single

Board member, from that of the optometrists in *Gibson*, *supra*, who all had a conflict, the existence of on actual conflict is still there and should have disqualified Dr. Dizon since she is in competition with him. *See*, *Brasewell v. Hayward Regional Medical Center*, 352 F.Supp.2d 639, 646 (W.D.N.C.2005) (presence of some committee members who compete with plaintiff violates basic due process).

More to the point, however, in demonstrating the Board's bias in keeping Dr. Dizon on the Board is what the Board did not do in failing to disqualify Dr. Dizon. In this regard, the Board never inquired of Dr. Williams as to what his practice entailed to see if there was a conflict. JA206,268 Dr. Watson further admitted that the Board had no rules or regulations that would determine if a conflict existed. Indeed, as Dr. Odlum candidly admitted at the abstention hearing (JA269):

> Q. And this was a matter discussed by the Board?
>
> A. I don't recall any detailed discussions concerning it.
>
> Q. Can you tell me how the Board reached that conclusion, then, just the procedure that you used to reach that conclusion?
>
> A. I don't – I don't – I don't recall.

In short, the Board could not even explain what it did in addressing this issue or if it in fact even did anything at all.

Thus, because the hearing established (1) that Dr. Dizon had a conflict and (2) that the Board did not even evaluate this issue, the district court's finding that the facts regarding Dr. Dizon's conflict were not sufficient to establish bias was clearly erroneous. Of course, this is just one factor in the abuse of discretion analysis regarding the Board's bias.

The next factor the court discussed was Dr. Williams' claim that "his inability to practice medicine is another exceptional circumstance triggering the need for federal intervention." JA27 While the court correctly noted this was one of Dr. Williams' arguments, the court misunderstood it completely, suggesting Dr. Williams should have just challenged the Board's refusal to issue him a renewal license "in the local courts." JA27-28 However, Dr. Williams already had a *stipulated* preliminary injunction in this case enjoining the Board from revoking his license. As it was undisputed that Dr. Williams had submitted all the paperwork for his renewal license after the March 10, 2006 TRO became a preliminary injunction (JA198-199, 304-306), the Board was required to issue this renewal license. Instead, the Board admitted that they did not process his renewal license solely because of his case, admitting as follows (JA199):

> Q. And can you tell me why he's not received his license for 2006 and 2007?
>
> A. The Board felt it's still a pending matter before the Court.

Moreover, the V.I. Code mandates that a license *shall* be issued upon payment of the annual fee and submission of items required by the Board. *See* 27 V.I.C. §50f. This Court previously addressed an identical issue in *Herz v. Degnan*, 648 F.2d 201 (3rd Cir. 1981), noting that the New Jersey Code provided for automatic renewal upon completion of a form and fee, *id.* at 208, which is the same language found in the relevant provisions of the V.I. Code.

As the Board candidly admitted, it routinely sends out renewal notices once the paperwork is complete. JA265-266 Thus, the refusal to give Dr. Williams his renewal license is just another example of the Board's unique and disparate treatment of Dr. Williams. In any event, the Board not only failed to issue the required renewal license to Dr. Williams, but it also knew the failure to process this renewal application would cause a significant hardship to Dr. Williams in practicing medicine (JA136-137)

Thus, the Board's deliberate attempt to circumvent the stipulated court order that allowed Dr. Williams to continue practicing medicine is likewise evidence of bias. The failure of Judge Gomez to even discuss this aspect of this argument also supports a finding that his decision to apply *Younger* in this case was an abuse of discretion.[13]

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[13] It is disappointing that the district court never addressed the multiple motions filed to enforce the March 10, 2006, stipulated preliminary injunction It is also difficult to understand

(Continued on following page)

The district court similarly dismissed Dr. Williams' argument that he is the only doctor in the Virgin Islands to be subjected to a licensing requirement that did not apply to any other doctor at the time of the 2005 hearing. JA20 The district court then discounted this argument by finding that there was no "evidence that the Board knew of other doctors' similar alleged wrongdoing and did not pursue other doctors as it did Dr. Williams' JA20 However, Dr. Watson did confirm that the Board knew there were other physicians who were in violation of the newly created standard (JA187):

> Q. And Dr. Williams certainly isn't the only doctor that didn't get his papers in on time, is he?
>
> A. I guess not.
>
> Q. And can you tell me whether or not doctors continue to practice medicine in this jurisdiction even though they did not get their papers in on September 30th, on a regular basis?
>
> A. I wouldn't say on a regular basis, but there are physicians that practice without having current licenses.

Dr. Odlum also testified that the Board knew that doctors were practicing with out licenses because their paperwork was incomplete, yet no doctor (other than

---

why the district court believed that enforcement of its own order was something to be addressed in the "local courts."

Dr. Williams) was disciplined because his or her paperwork was not complete. JA265-266 Thus, the court's finding that Dr. Williams had made no such showing of disparate treatment between Dr. Williams and other doctors in the Virgin Islands is clearly erroneous as well.

The court also dismissed Williams' arguments about the lack of procedural safeguards, finding this argument did not rise to the "definition" of exceptional circumstances utilized in *Kugler*. JA28-29 As the court did not list the particular "procedural safeguards" it was referring to in disposing of this argument, it is presumed the court is referring to the Board's lack of any procedural or evidentiary standards.

As previously noted, however, Dr. Williams reference to a lack of standards was to demonstrate that the Board's findings were *"ipse dixit"* findings since they did not refer to expert opinions, regulations or other standards, which allowed the Board's personal bias to dictate the results rather than objective findings. In this regard, the district court cited this standard in its opinion, quoting from *Withrow v. Larkin*, 421 U.S. 35, 47 (1975):

> [a litigant] must overcome a presumption of honesty and integrity in those serving as adjudicators; and [he] must convince [the court] that, under a realistic appraisal of psychological tendencies and human weakness, conferring investigative and adjudicative powers on the same individuals poses

> such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented.

Yet, when applying this standard to the facts of the case, the district court expressly resorted to the general due process argument rather than discussing the "lack of standards" argument being asserted by Williams to support his claim that this failure allowed the Board to exercise its bias without any procedural checks, like expert testimony, a regulation or recognized medical standard. As such, the district court erred in evaluating this issue as well.

More importantly, the district court simply made no findings regarding the bulk of facts submitted by Dr. Williams in support of his claim of bias, as the district court did not address any of the follow facts in its opinion:

1. The Board's reliance on evidence received after the hearing (without notice to Dr. Williams) after telling Dr. Williams no such additional evidence would be considered.

2. The Board's finding of "lying" regarding the ACLS certification when the transcript revealed otherwise.

3. The Board's drastically increased penalty after the second hearing.

While the district court took note of these specific arguments at the outset of its opinion (JA17-18), the court totally failed to discuss any of these issues. As

such, the court's failure to consider and weigh this evidence constitutes clear error as well.

As for the first point that the district court did not discuss, Dr. Williams inquired from the Board at the outset of the disciplinary hearing what were the documents it intended to rely upon, specifically asking about records from pharmacists. JA399 In response, the Board stated as follows (JA399-400):

> Mr. Holt: *If that's part of the charge against him, you should have listed that in the charges.*
>
> Ms. Smock: *It's not part of the charges against him.*
>
> Mr. Holt: *And I should be given copies of it so that I could respond to it.*
>
> Dr. Odlum: *It's not part of the charges.*
>
> Ms. Smock: *The charges are before you. What the doctor is charged with exclusively we have before you, nothing else, nothing more.*

Yet despite this exchange, the Board subsequently issued subpoenas to pharmacy companies and the local pharmacist (JA690-694), which it relied upon in its findings and penalty section without notifying Dr. Williams or giving Dr. Williams an opportunity to respond. JA173-181 Based on these records, the Board

made findings that Dr. Williams "lied to the Board" and violated certain DEA regulations.[14] JA832

What is the motive behind telling Dr. Williams that it specifically will not rely on such evidence, when the Board obviously intended to do so? At some point, the Board's total disregard for Dr. Williams' due process rights goes beyond incompetence and transforms into bias. By clearly lying to Dr. Williams and then holding this information from him, the Board's efforts to "get" Dr. Williams becomes clear. The district court's failure to even discuss this issue constitutes error as well.

The same error applies to the district court's failure to discuss the Board's erroneous finding of lying regarding Dr. Williams' ACLS certification. In this regard, the Board's finding was just wrong, as the transcript reveals. But the more important point occurs over the Board's refusal to admit it erred in finding that Dr. Williams' "lied" about his ACLS certification, demonstrating the Board's cavalier approach to deciding what is true and what is not true, even when the trial transcript reveals that the truth asserted by the Board, just like the emperor, "has no clothes." The failure of the district court to address this issue constitutes an error as well.

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[14] The Board notified the DEA of its decision which prompted the DEA proceedings that remain pending, but the Board has no knowledge of the DEA finding that Dr Williams violated any DEA regulations. JA181

Indeed, if there is one fact that stands out above the others in demonstrating bias, it is the drastically increased punishment imposed after the second hearing. As this Court noted in *Herz v. Degnan*, 648 F.2d 201, 210 (3rd Cir. 1981), the "adaption of a new tactic after" the Board's order was enjoined "may be a case falling within the 'bad faith and harassment official lawlessness' exception" of *Younger*. *Id.* at 210.

Indeed, the Supreme Court has held in *North Carolina v. Pearce*, 395 U.S. 711 (1969) that vindictiveness is presumed when a defendant receives a harsher sentence when being resentenced after a successful constitutional challenge to his first conviction. As this Court noted in addressing *Pearce* and its subsequent holdings, a defendant must be free of apprehension of any retaliatory motivation, which is presumed to have occurred when there is an increased sentence after the second trial with no articulated basis explaining such an increase. *United States v. Esposito*, 968 F.2d 300, 303 (3rd Cir. 1992).

Applying the standard to the facts before the district court, the increase from a one year suspension to a death sentence as far as practicing medicine is concerned certainly raises the same presumption of vindictiveness. Indeed, when coupled with the other factors on the record, vindictiveness is more than just presumed, it has been proven.

While the Board attempted to explain its decision to revoke Dr. Williams' license rather than just to impose a one-year suspension, these explanations were

not supported by the facts as previously discussed. More to the point, however, is the district court's total failure to even address this critical fact in disposing of Dr. Williams' arguments. The glaring oversight supports a finding by this Court that the district court abused its discretion by failing to address the most critical issue before it, as the drastically increased sentence without any articulated factual basis to justify it supports a finding of bias by itself.

In short, the district court's analysis was so flawed in both addressing the facts that it did discuss and in its failure to address other critical factors that it abused its discretion in not applying the *Younger* exceptions. The evidence overwhelmingly supports only one conclusion – that the Board was so biased against Dr. Williams that *Gibson* controls so that this case should not have been dismissed.

CONCLUSION

It is unknown whether the Board was biased against Dr. Williams for (1) asserting his legal rights, making the Board look unprofessional since this Court reversed the Board's initial findings, or (2) for standing up to the Board, so that a message had to be sent to other doctors that such insubordination would not be tolerated. What is clear is that the Board's conduct after the first TRO culminating in a lifetime revocation of Dr. Williams' license after he challenged the Board's initial one year suspension demonstrates such bias so as to warrant this Court to adopt the

rationale in *Gibson* and not apply the *Younger* abstention doctrine in this case.

For the reasons set forth herein, it is respectfully submitted that the order of the district court dismissing this case should be reversed with instructions to reinstitute the preliminary injunction and proceed to the merits of the Appellant's claims.

Dated: February 9, 2009 /s/ Joel H. Holt

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Christiansted, VI 00820
(340) 773-8709
holtvi@aol.com

CERTIFICATE OF GOOD STANDING

I hereby certify that I am a member in good standing of the bar of the United States Court of Appeals for the Third Circuit.

Dated: February 9, 2009 /s/ Joel H. Holt

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS

I hereby certify that the text of Appellant's Brief complies with the "Type-Volume Limitation" set forth in Federal Rule of Appellate Procedure (32)(a)(7)(B), does not exceed 14,000 words and that it is printed

in proportionally-spaced 14-point font. The Brief contains 9758 words.

Dated: February 9, 2009 /s/ Joel H. Holt

CERTIFICATE OF COMPLIANCE WITH E-BRIEF

I hereby certify that the text of the E-Brief and the hard copies of the brief mailed to the Third Circuit are identical.

Dated: February 9, 2009 /s/ Joel H. Holt

CERTIFICATE OF VIRUS CHECK

I hereby certify that a virus check was performed by TrendMicro 2008 software and no viruses were detected.

Dated: February 9, 2009 /s/ Joel H. Holt

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 9, 2009 I caused *two* true and exact copies of **Brief of Appellant** to be hand delivered and filed by the ECF System to:

TERRYLN M. SMOCK, ESQ.
Assistant Attorney General
Department of Justice
34-38 Kronprindsens Gage
GERS Complex, 2nd Fl.
Charlotte Amalie, St. Thomas 00802

Dated: February 9, 2009 /s/ Joel H. Holt

BEFORE THE BOARD
OF MEDICAL EXAMINERS
FOR THE TERRITORY OF THE
UNITED STATES VIRGIN ISLANDS

IN THE MATTER OF WILBERT WILLIAMS, JR., M.D.
ACTION TO SHOW CAUSE

SHOW CAUSE HEARING

September 12, 2005

Held at:
Charles Harwood Medical Complex
Christiansted, St. Croix
U.S. Virgin Islands

8:51 a.m. – 4:50 p.m.

Board Members Present
THELMA R. WATSON, Chairperson
FRANK ODLUM, Member
JOSEPH DeJAMES, Member
MICHELLE DIZON, Member
CLAUDIUS L. HENRY, Member

ELITE REPORTING SERVICES
P.O. Box 5619
Christiansted, St. Croix
U.S. Virgin Islands 00823
(340) 713-1318

* * *

[17] MR. HOLT: What are the documents you intend to rely upon?

MS. SMOCK: The official records that Dr. Landron is responsible for as head of the medical examiners, which is the autopsy report.

MR. HOLT: That's it?

MS. SMOCK: That's it.

MR. HOLT: Because I'm told that you guys have gone back and looked at his grievances and lawsuits against him; you been talking to the pharmacists. All of those things you've been doing, so it's not really a clean slate.

DR. ODLUM: That's nothing –

MS. SMOCK: No. No. This Board has a right to investigate to any extent possible any situation, and that would be part of an investigation is to look at everything.

MR. HOLT: If that's part of the charge against him, you should have listed that in the charges.

MS. SMOCK: It's not part of the charges against him.

MR. HOLT: And I should be given copies of it so that I could respond to it.

DR. ODLUM: It's not part of the charges.

[18] MS. SMOCK: The charges are before you. What the doctor is charged with exclusively we have before you, nothing else, nothing more.

THE CHAIRPERSON: So can we proceed? Is Dr. Williams going to speak?

MR. HOLT: No, that's his statement.

THE CHAIRPERSON: Based on your statement, we would like to ask Dr. Williams some questions before you proceed.

* * *

[28] BY THE CHAIRPERSON:

Q. Can you show us your ACLS certification? Your card, there is a card that you get showing that you are certified.

This just show that you attended a roll out. This doesn't show that you are certified. Do you have a card, a ACLS card?

A. No, that's a certificate of completion of the ACLS.

DR. DIZON: There is usually a card that certifies you.

BY THE CHAIRPERSON:

Q. I have never seen that before.

A. That's under the American Heart Association and Inter-America. That was done in Barbados under the American Heart Association.

Q. There is an American Heart Association card that each person gets.

[29] A. I do not have that card anymore.

Q. What's the expiration date on it?

A. I think that was done in 2003 – 2.

Q. 2002. So it's a two-year certification.

A. I think they certify for two years.

Q. American Heart Association Advance Cardiac Life Support is a two-year certification. So this expired in 2004; correct? Do you have any re-certification since 2004?

A. No.

* * *

IN THE DISTRICT COURT
OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

WILBERT WILLIAMS, M.D., Plaintiff, v. GOVERNMENT OF THE VIRGIN ISLANDS, BOARD OF MEDICAL EXAMINERS: THELMA R. WATSON, FRANK A. ODLUM, and JOSEPH DEJAMES, Defendants.	)	Civil No. 2005/0097 June 14, 2007 10:25 a.m.

TRANSCRIPT OF EVIDENTIARY HEARING
BEFORE THE HONORABLE
JUDGE RAYMOND L. FINCH

APPEARANCES:

LAW OFFICES OF JOEL H. HOLT
2132 COMPANY STREET, SUITE 2
CHRISTIANSTED, QUINN HOUSE
ST. CROIX, VI 00820
BY: JOEL H. HOLT, ESQ.,

DEPARTMENT OF JUSTICE
48B-50C KRONPRINDSENS GADE,
GERS BLDG., 2ND FLOOR
ST. THOMAS, VI 00804-6286
BY: TERRILYN SMOCK, AAG
AQUANNETTE Y. CHINNERY, AAG
TAMIKA ARCHER, AAG

VALERIE LAWRENCE, R.P.R.
OFFICIAL COURT REPORTER
3013 ESTATE GOLDEN ROCK
CHRISTIANSTED, ST. CROIX
U.S.V.I. 00820-4355

* * *

[16] Dr. Watson – Direct

your opinion – let me back up. In your opinion, notwithstanding those comments, did you not go back and look at records subpoenaed from Golden Rock Pharmacy and the various manufacturers?

MS. ARCHER: Objection, Your Honor. Relevancy.

THE COURT: Why is that relevant?

MR. HOLT: I believe it goes to bias.

MS. ARCHER: Clearly the Board has the right to investigate charges of any improper actions of Doctors. I don't see how this is establishing bias in any sense, rather than establishing that there was an investigation of some sort.

THE COURT: The question of fact. Overruled. Proceed.

BY MR. HOLT:

Q. In fact, after, at the hearing, nobody introduced any records from any pharmacy, did they?

A. We did not introduce any, because we did not know which pharmacist. It was during that hearing

that we were told which pharmacies Dr. Williams may have obtained the morphine.

Q. Okay. And after that hearing, you then went on and got records from the pharmacist, didn't you?

[17] A. As part of our continued investigation, yes.

Q. After that investigation, you went out and got records regarding D.E.A., didn't you?

A. Repeat your question.

Q. You went out and got records regarding the D.E.A. requirements, what you had to do to comply with D.E.A.?

A. We got information about D.E.A. regulations.

Q. In your, in your final opinion, Exhibit No. 9, you discuss that evidence, didn't you?

A. Yes.

Q. Okay. And at no time did you give Dr. Williams a chance to respond to any of those documents, did you?

A. We – no, we did not.

Q. Okay. And as a matter of fact, you found it critical that he violated D.E.A. regulations; you made that finding, didn't you?

A. Based on our investigation, that's correct.

Q. Okay, but at no time did you tell Dr. Williams that one of the things you would be looking at is whether or not he violated D.E.A. regulations, was it?

A. Well, as part of our investigation, this is the information that we came up with. As part of the treatment of this particular patient, we needed to know the dose of morphine that was used. He could not [18] adequately tell us at the hearing. The concentration of morphine that was used from the vial.

Therefore, we needed to get further evidence from the pharmacist that he stated he may have gotten the medication from so we could determine whether the patient was appropriately dosed or not.

Q. Okay, but, but, first of all, you never gave him a chance to respond to any of the information that you found after the hearing, did you?

A. No.

Q. Okay. And secondly, nothing in the notice, Exhibit 1-A, told Dr. Williams that one of the charges against him would be violating D.E.A. regulations, did it?

MS. ARCHER: Objection. This goes to due process.

MR. HOLT: No, this goes to bad faith, Your Honor.

THE COURT: Overruled. Proceed.

A. Repeat.

Q. Nothing in the July 14th, letter, Exhibit 1-A, told Dr. Williams, that he would also be charged with violating D.E.A. regulations, did it?

A. Nothing said about D.E.A. regulations. It talked about his treatment and the care of the patient, and [19] that is a part of the treatment and care of that patient.

Q. Okay. But you didn't mention the word D.E.A., did you?

A. No, we did not mention the word D.E.A.

Q. Okay. Now, you also in there found that he was practicing medicine without an active license, is that part of your findings?

A. That was part of the findings.

Q. Okay. Was there anywhere in any of the charges against Dr. Williams that told him that might be part of the charges against him, the July 14th letter?

A. It was not mentioned in the July 14th letter, because we didn't have information, at that time.

Q. And after you obtained whatever that information is, did you give Dr. Williams a chance to respond to it?

A. No.

Q. Okay.

Showing you what I'm marking as Exhibit No. 12, can you look at this document, and tell me what this card is.

A. This card is a medical licensure.

Q. What is it?

[20] A. A medical licensure card.

Q. And it says he has a medical license?

A. Yes.

Q. Okay. And it says he has a medical license – when did he treat Miss Ventura?

A. On April 15th.

Q. Okay. And it says he has a medical license effective April 1st, didn't it?

A. That's what the license says. However, he presented these documents to the Board after that date. His check was dated April 15th, and his documents were received by the Board after April 19th, and completed on April 8th. Because of the administrative way things are done, because he didn't present his stuff in the month of April, his license was dated for that month. However, his documents were not sent into the Board until after April 15th.

Q. Okay.

A. Which is the date of his check.

Q. And this medical license is the license he's to use to show that he's licensed to practice medicine, that's what you give each doctor?

A. That's the license.

Q. And this license is assigned by whom?

[21] A. The Secretary of the Board, Dr. Frank Williams.

Q. Dr. Odlum was actually at this hearing, wasn't he?

A. Dr. Odlum was at the hearing.

Q. So you didn't tell Dr. Williams in your July 14th letter that this might be an issue, did you?

A. No, that was not mentioned in the letter.

Q. And the information you politely told the Court about, about when he wrote the check and all of that other thing, you didn't provide that information at the hearing, did you?

A. I'm not sure if it was mentioned in the hearing. I would have to go back and look through the transcript.

Q. Well, isn't it true that you went and got those materials together after the hearing?

A. I believe there were questions during the hearing asking about whether he had a valid license, and when, I have to go through and read exactly what those were, but I'm sure it's in the transcript.

Q. Well, what about the checks and all of the other things, the application you just talked about with the different dates, did you have that at the hearing?

A. I'm not sure if we had it at the hearing.

Q. Okay. And in any event, the Medical Board has given him a document that says on April 1st he was [22] licensed, isn't that correct?

A. That's what the document said, yes.

Q. As a matter of fact, each year you send the doctors out a letter telling them they need to renew their license, right?

A. And the paperwork needs to be in by September 30, because the license expires on October first of each year.

Q. Don't they have to have a tax clearance letter, D.E.A. certificate, a bunch of different things?

A. That's correct.

Q. And you tell them if they don't have that, don't send it in, don't you?

A. We tell them to send in the application completed.

Q. Okay. So, if they don't have all the documents, you tell them don't send it in until you have everything.

MS. ARCHER: Objection. Leading.

THE COURT: Sustained.

BY MR. HOLT:

Q. Can you tell me what you do if a doctor sends in an application that's not completed?

A. It's not processed.

Q. You send it back to him?

[23] MS. ARCHER: Objection. Relevance.

THE COURT: Overruled.

A. They are notified that it's incomplete.

Q. Do you tell them to stop practicing medicine?

MS. ARCHER: Objection. Leading.

THE COURT: Overruled.

A. No.

Q. And Dr. Williams certainly isn't the only doctor that didn't get his papers in on time, is he?

A. I'm sure he's not.

Q. Okay. So, multiple doctors don't get their papers in on September 30th, and yet they continue to practice medicine, isn't that correct?

MS. ARCHER: Objection. Leading.

THE COURT: Sustained.

BY MR. HOLT:

Q. Can you tell me whether or not doctors continue to practice medicine in this jurisdiction even though they don't get theirs papers in on September 30 on a regular basis?

MS. ARCHER: Objection. Leading.

THE COURT: Overruled.

A. It is, it has been a practice; but it's something that the Board is taking a closer look at.

[24] Q. As of April 2005, that was the practice, wasn't it?

A. That was the practice.

Q. Okay. Now, you also find in here that Dr. Williams filed a false statement concerning his ACLS certification. Are you aware of that finding?

A. Yes.

Q. You say on page 12, Dr. Williams stated that he is currently ACLS certified, which he is not. This is considered by the Board to be false testimony given at the hearing; is that correct, that's one of your findings?

A. Correct.

Q. Can you look at page 27 of the transcript in front of you.

Just go to page 29. Do you see that?

A. On 29?

Q. Do you see that?

A. Page 29 of the hearing?

Q. Yes. Page 29 of the transcript, do you see that?

A. I have page 29.

Q. Do you see where Dr. Williams showed you his ACLS certificate for 2002?

A. What Dr. Williams showed was not an ACLS certificate.

[25] Q. Okay. He told you he was certified in 2002, didn't he?

A. That's what he says here, um-hum.

Q. And then the question was asked, "American Heart Association Advance Cardiac Life Support – that's what we're talking about here when we say ACLS?

A. That's correct.

Q. – is a two-year certification. So this expired in 2004, correct?"

A. Correct.

Q. "Do you have any recertification since 2004?" Do you see that question?

A. Um-hum.

Q. What did he answer?

A. "No."

Q. So what is the basis for you finding that Dr. Williams testified that he was currently ACLS certified when in the transcript it shows that he said he was not so certified?

A. I don't see anything here.

Q. Excuse me?

A. I don't see anything here.

Q. Okay. Do you see the statement on page 29, do you see that?

[26] A. Um-hum.

Q. Do you see where he's asked the question, "American Heart Association Advance Cardiac Life Support is a two-year certification. So this expired in 2004, correct?" And in the question, "Do you have any recertification since 2004?" Answer: "No." Do you see that?

A. I see that.

Q. So he told you under oath that he currently did not have a certification, didn't he?

A. Yes. Yes.

Q. And yet, notwithstanding the fact that that's what the record said, one of the findings that you had

against him is he lied to you about that when he said he was certified, didn't he?

A. Yes, I guess.

* * *

IN THE DISTRICT COURT
OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

WILBERT WILLIAMS, JR., M.D., Plaintiff, v. GOVERNMENT OF THE VIRGIN ISLANDS, and BOARD OF MEDICAL EXAMINERS, Defendants.	Civil No. 05-97 November 17, 2008 10:30 a.m.

TRANSCRIPT OF HEARING
BEFORE THE
HONORABLE CHIEF JUDGE CURTIS V. GOMEZ

APPEARANCES:

LAW OFFICE OF JOEL H. HOLT, ESQ., P.C.
2132 COMPANY STREET, SUITE 2
CHRISTIANSTED, ST. CROIX, V.I. 00820
BY: JOEL H. HOLT, ESQ.,
FOR THE PLAINTIFF

* * *

[43] Dr. Watson – Direct

* * *

Q. Let's talk about the hearing for a second. Did the government ever call an expert to testify about whether or not Dr. Williams' care was acceptable for a family practitioner? Did you have an expert witness to testify about that?

A. No.

Q. Did the government find that his care was [44] substandard by clear and convincing evidence, by a preponderance of the evidence, or by no reasonable doubt, did you have a standard of care that you applied?

MS. CHINNERY-MONTELL: Objection. Compound.

THE COURT: Overruled.

A. There is a standard of care for treatment of patients like Miss Ventura that all physicians know.

Q. Did you have an evidentiary standard that you decided that this is 51 percent, or two thirds, or 5 percent, did you all just have that standard of care, evidentiary standard?

THE COURT: You mean a standard – of review.

MR. HOLT: Right.

THE COURT: Does the Board have a standard of review, any standards?

A. We have standards, and the members of our Board are varied in their specialties, and one of our Board members is a family practitioner.

Q. Which one is that?

A. Dr. Joseph DeJames.

Q. Now, I take it, then, the Board was the entity that did the investigation into that matter. They're the ones that looked at medical records, talked to

* * *

[45] Miss Ventura, got the documents pursuant to the subpoena? The Board was the one that actually did the investigation; is that correct?

A. Yes, the Board was, yes.

Q. So in this particular case, the Board acted as the investigating arm, as well as the arm which decided what that penalty would be, didn't they?

A. Yes.

Q. Okay. So you did not have an independent investigator present this evidence to the Board, did you? You did your own investigation, didn't you?

A. Yes.

* * *

[56] Q. Do you recall ever, the Board ever make any findings on the record as to whether or not Dr. Dizon had a conflict of interest sitting on the Board because she did have competition with Dr. Williams?

A. I don't recall there being anything on the record. However, Dr. Dizon is an endocrinologist. Dr. Williams is a general practitioner. Two completely different specialties.

Q. So you just made the assumption that they weren't in competition?

A. That's, that's my view on it.

Q. Okay. And what is endocrinology?

A. Endocrinology is the practice of medicine that deals with all of the endocrine, glandular systems of the body, diabetes, thyroid disease, adrenal problems, et cetera.

Q. Study of the glands, related medical problems, such as diabetes, hypertension, things of that nature?

A. Hypertension is not a big one for endocrinologists, but diabetes is.

* * *

RESOLUTION NO. 1745

BILL NO. 28-0198

TWENTY-EIGHT LEGISLATURE OF THE VIRGIN ISLANDS

Regular Session

2009

A Resolution honoring and commending Dr. Wilbert Williams, Jr. for his contribution to the Virgin Islands and for the Virgin Islands Medical Board to grant him due process as it relates to his privileges as a Medical Physician

---0---

WHEREAS, Dr. Wilbert Williams, Jr. received his M.D. Degree from Albany Medical College in Albany, New York in May of 1978; and

WHEREAS, Dr. Wilbert Williams, Jr. was recruited by Dr. Cora Christian in 1980 to work as a physician with the Department of Health on St. Croix; and

WHEREAS, Dr. Wilbert Williams, Jr. worked at the Frederiksted Health Center in 1981; and

WHEREAS, Dr. Wilbert Williams, Jr. opened a solo Family Practice office on Strand Street in Frederiksted in 1982, where he served 20 to 25 people per day; and

WHEREAS, In 2003, with the help of the 23rd Legislature, he built the Agape Medical Building at

252 Estate Glynn, Christiansted to better serve the people of St. Croix; and

WHEREAS, Dr. Wilbert Williams, Jr. has served as an outstanding Medical Doctor on St. Croix for some 29 years; and

WHEREAS, Dr. Wilbert Williams, Jr. made medical house calls to residents who were unable to come to his office; and

WHEREAS, Dr. Wilbert Williams, Jr. served as a volunteer physician and provided free medical exams for the Boy Scouts; and

WHEREAS, Dr. Wilbert Williams, Jr. volunteered his services to conduct Breast Screening at the Imaging Center; and

WHEREAS, Dr. Wilbert Williams, Jr. volunteered his services to assist residents who could not afford to pay for medical exams in the Cedar Case Claim; and

WHEREAS, residents of St. Croix are requesting that Dr. Wilbert Williams, Jr. be given back his medical privileges so he can serve the people of St. Croix; and

WHEREAS, the Legislature finds that Dr. Wilbert Williams, Jr. has made tremendous contributions to the people of the Virgin Islands; Now, therefore,

Be it resolved by the Legislature of the Virgin Islands:

SECTION 1. That it is the sense of the Legislature that Dr. Wilbert Williams, Jr. is allowed due process as it relates to his privileges as a Medical Physician by the Virgin Islands Medical Board.

SECTION 2. That the Executive Director of the Legislature shall transmit a copy of this Resolution to the Governor Juan F. Luis Governing Board, to each member of all medical governing boards and medical committees at the Governor Juan F. Luis Hospital and to Dr. Wilbert Williams, Jr.

Thus passed by the-Legislature of the Virgin Islands on December 22, 2009.

Witness our Hands and Seal of the Legislature of the Virgin Islands this 11 Day of January, A.D., 2010.

[SEAL]

/s/ Louis Hill
Louis Patrick Hill
President

/s/ Sammuel Sanes
Sammuel Sanes
Legislative Secretary